SUPREME COURT OF THE UNITED STATES.

No. 231.

ROBERT H. PEARSON, APPELLANT,

vs.

CHARLES P. DUANE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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1 In admiralty.

To the Honorable Ogden Hoffman, judge of the United States district court for the northern district of California:

The libel of Charles P. Duane, a resident of the city and county of San Francisco, State of California, within said district, against R. H. Pearson, who lately was and now is master of the steamship John L. Stephens, an American vessel, in a cause of spoliation and personal damage, civil and maritime, alleges as follows:

First. That on the fifth day of June, A. D. 1856, libellant being an American citizen, and a resident of the city and county of San Francisco aforesaid, where he had been residing as a good and lawful citizen for several years previously, was without color or warrant of law forcibly abducted and against his will and ineffectual resistance carried out of said State of California upon the high seas in and on board of a certain steamship called the Golden Age, and thus forcibly carried to the port of Acapulco, a Mexican port, in the Pacific Ocean, some two thousand miles distant from his said home and residence.

2 Second. That on or about the twelfth or thirteenth day of June, 1856, at said port of Acapulco, libellant, in order to escape the duress and threatened continuation of imprisonment and carrying of libellant still further away from his home and country, succeeded in regaining his liberty and reaching the shore from said steamship Golden Age.

Third. That on the twenty-third day of June, A. D. 1856, the said steamship John L. Stevens, commanded by said R. H. Pearson, arrived in said port of Acapulco on her voyage from Panama to San Francisco aforesaid, and remained in said port for the space of about twelve hours, when she resumed her voyage as aforesaid.

Fourth. That said steamer John L. Stephens was then, had previously been, and is now, a vessel constructed expressly for and employed in the carrying and transportation of persons, passengers, and freight between the ports of Panama, Acapulco, and San Francisco aforesaid, according to the usual custom of common carriers for , and said steamer had then on board a number of passengers bound to San Francisco.

3 Fifth. That on said twenty-third day of June, 1856, libellant, with other passengers from said Acapulco, went on board of said steamer John L. Stevens and she departed said port for San Francisco in the afternoon of said day, with libellant and the other passengers on board; that libellant, through the assistance proffered him by some persons on board, to pay his passage money as customary to the person whose duty it was to receive the same, but it was refused by both the master, said R. H. Pearson, and the person aforesaid acting under the orders and direction of said master; that after being out of said port of Acapulco some two or three days the said Pearson sent for libellant to call at his office; that libellant then went there and said Pearson then stated to libellant that he, Pearson, had since leaving said port of Acapulco and by means of the San Francisco public newspapers discovered that libellant had been banished and sent away from the State of California by the vigilance committee of San Francisco; said Pearson then and there said to libellant that he, Pearson, was a member of the said vigilance committee of San Francisco, and that although he,

4 Pearson, had always heard libellant well spoken of as being a good man and citizen, that by the exertions of libellant while he was engaged in the fire department of San Francisco the steamer he was then on, or another of the same line of steamers, had been saved from destruction, he, Pearson, could not land libellant in San Francisco aforesaid or permit

him to go ashore at that place without first informing said vigilance committee that he, libellant, was on board; that libellant then informed said Pearson of his entire willingness to have said vigilance committee informed of his being on board said steamer when she should so arrive at said port of San Francisco; said Pearson then stated to libellant that if they should meet the steamship Sonora, a vessel belonging to the same line of steamers, then on her voyage from San Francisco aforesaid to Panama, he should put libellant on board of said steamer Sonora; libellant then protested against such attempt being made and said to said Pearson that should he attempt or succeed in forcing him out of said steamer John L. Stevens upon the said Sonora libellant would hold him, Pearson, responsible for so high-
5 handed an outrage on the high seas.

Sixth. That on the evening of the twenty-sixth day of June, 1856, between the hours of about nine and ten o'clock the said steamer Sonora came in sight, whereupon said Pearson caused her to be spoken and stopped; that said Pearson then caused several employees of said steamer John L. Stephens to search for libellant with a view of forcing libellant out of her and into said steamer Sonora; after considerable delay said men found libellant and attempted to take libellant by force and violence for such purpose, when libellant stoutly resisted them and refused to go, said men stating they were ordered by said Pearson to take libellant and put him on board said steamer Sonora; that libellant finding resistance useless was, against his consent and will, finally and forcibly thrust out of said steamer John L. Stevens on the high seas into and upon the said steamer Sonora; that in being so transported from steamer to steamer libellant hailed said Pearson, to which said Pearson replied, "Well, sir," or words to that effect; libellant then said to him, my name is Duane; you had me forced from your
6 steamer on board this steamer; I shall hold you responsible if I live through it, or words to that effect, to which said Pearson made no reply; that libellant was forced and dragged up the ladder of said Sonora up to and upon her deck by the orders of said Pearson, master as aforesaid of said John L. Stephens.

Seventh. That libellant when so forced on said steamer Sonora was sick, without money or means, without clothes, and having no friends on board of said steamer that he knew of, and in a great state of mental and bodily suffering caused by the aforesaid illegal, unjustifiable, and malicious act and acts of said Pearson, master as aforesaid.

Eighth. Libellant alleges that said R. H. Pearson, master as aforesaid, at the time of said wrongs so committed as aforesaid upon libellant, was a member of said vigilance committee of said San Francisco.

Ninth. That said vigilance committee of which said Pearson was a member was composed of a large body of persons, mostly American citi-
7 zens residing in the State of California, armed and organized in open rebellion to the constitution, laws, and legally constituted authorities of the said city of San Francisco, the State of California, and the United States; that said committee during said month of June and before the time and times of the before-mentioned wrongs and grievances so committed by said Pearson upon libellant, had, without color or warrant of law, forcibly, wickedly, unlawfully, and maliciously caused libellant to be exiled and banished from the State of California and sent to Panama, a port in the republic of New Grenada, several thousand miles distant from his home and country; and that said committee affixed the penalty of death upon libellant should he ever return to the State of California aforesaid; that said vigilance committee as aforesaid were being so organized as aforesaid, bound together by oaths and obligations, respectively, taken and assumed by them among other things to obey and carry out the rules, regulations, edicts, intentions, de-

signs, sentences, and punishments made and promulgated by said
8 body, and were so combined, associated, and confederated as that in the perpetration of unlawful and illegal acts by them respectively assumed, full indemnity and security was extended both in person and property.

Tenth. That said R. H. Pearson, master as aforesaid, at the time aforesaid, in inflicting the aforesaid wrongs and grievances upon libellant upon the high seas wilfully, unlawfully, and maliciously co-operated, aided, and assisted said vigilance committee in the infliction, carrying out, and completion of said nefarious intention, design, and sentence of banishment and exile of libellant from the State of California; all of which acts, intentions, designs, and sentence of banishment exile of libellant from the State of California, said vigilance committee, in respect to libellant, were for the first time known and discovered by said R. H. Pearson after libellant was in the lawful and peaceable pursuit of his business as a passenger on board of said steamship John L. Stevens on her said voyage from the port of Aca-
9 pulco aforesaid to the port of San Francisco. And libellant further alleges that the said refusal of his passage money as aforesaid, and the forcible and illegal transfer of libellant from said steamer John L. Stevens to the said steamer Sonora as aforesaid, was wholly owing to the knowledge and information so derived by said Pearson from the newspapers aforesaid and the malicious determination to injure libellant, and to aid and assist said vigilance committee in carrying out said nefarious sentence of banishment and exile of libellant from the State of California and landing him at said port of Panama aforesaid.

Eleventh. That libellant was so taken and carried against his will and consent to the port of Panama aforesaid, and being still determined to effect a return to the said State of California, applied to the agent of the steamship company of that place for assistance and a passage back to San Francisco, but was refused by said agent; that he then procured the interference of the American consul residing at said place with said agent
10 for such purpose, but all efforts were unavailing. Libellant then went to Aspinwall, in said republic of New Grenada, and obtained a passage from thence in an English steamer to Greytown, a harbor or port in the republic of Nicaragua, with the intention of getting on board of one of a line of steamers then running from said republic of Nicaragua to San Francisco aforesaid, but upon arriving there the steamer had departed some two or three days and the line of steamers discontinued. Libellant then returned to Aspinwall aforesaid, after making several fruitless efforts to return to San Francisco from Panama, and being sick and destitute made use of a letter kindly furnished by R. L. Whiting, esq., commander of said steamship Sonora, and through charity obtained a passage to the city of New York, State of New York, where he arrived during the month of September, 1856.

Twelfth. That when libellant was so banished from the State of California, as aforesaid, by the said vigilance committee, he was threatened with
11 the penalty of death should he ever return to said State; that libellant was aware that said committee had caused to be executed a number of persons, without color or warrant of law or right, and that the said committee had the power and ability to put in execution their threats, and libellant believed and had reason to believe from the conduct of said R. H. Pearson as aforesaid, and the treatment he received from the hands of said vigilance committee, and their threats as aforesaid, which were well known to said Pearson, that should he return to said State, his return, if attempted or if successful, would be impeded and resisted, and his life put in peril and jeopardy, which belief existed up to the time of his departure from New York to California.

Thirteenth. That upon his arrival in New York aforesaid he was without money or means, his character and reputation blasted, and he, deponent, dependant upon the charity of his acquaintances and friends for
12 subsistence; that he was utterly unable to make a livelihood or accumulate sufficient means or money to pay his passage back to California, and was otherwise sick and prostrated in mind and body, all of which was owing to and in consequence of the wrongs committed upon him as aforesaid, and was for several months confined in a hospital for the sick in said city, and physically unable to attempt the voyage to California, and without means to do so until the month of February, 1860, during which month he left said city of New York and arrived in the State of California.

Fourteenth. That by reason of the wrongs, indignities, outrages, torts, and spoliations committed upon libellant as aforesaid by the said R. H. Pearson, master of the said steamship John L. Stevens, on the high seas aforesaid, libellant has sustained great damages, which he is entitled to recover of said Pearson, and that said damages are to the amount and value of fifty thousand dollars, which the libellant claims to recover of and from said R. H. Pearson in this suit.

13 Fifteenth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this honorable court.

Wherefore the libellant prays that a warrant of arrest in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said R. H. Pearson, and that he may be required to appear and answer on oath this libel, and all and singular the matter aforesaid and the interrogatories hereto annexed, and that, if he cannot be found, his goods and chattels, and if none be found, his credits and effects may be attached to the amount sued for and costs, and that this honorable court would be pleased to decree the payment of the damages sustained by the libellant, with costs, and that he may have such other and further relief as in law and justice he may be entitled to receive.

C. P. DUANE.

CHAS. D. JUDAH, *Proctor for Lib't.*
JNO. NUGENT, *Advocate.*

Sworn this 27th day of July, A. D. 1860, before me,
W. H. CHEVERS, *U. S. Com.*

14 Interrogatories propounded to R. H. Pearson respondent, by Charles P. Duane, libellant, in a cause civil and maritime, for personal damage and spoliation, in the district court of the United States for the northern district of California.

First interrogatory. Were you on the 23d, 24th, 25th, and 26th days of June, 1856, master or commander of the steamship John L. Stevens?

Second interrogatory. Did you on the 23d day of June, 1856, as such master or commander, enter the port of Acapulco, in said steamer, bound on a voyage from Panama to San Francisco, State of California?

Third interrogatory. Did you not, after leaving said port of Acapulco, send for libellant, Charles P. Duane, and in a conversation with him state that you were a member of the vigilance committee of San Francisco? that you had since leaving Acapulco ascertained from the newspapers
15 from San Francisco that he, libellant, had been sent away from there by the vigilance committee?

Fourth interrogatory. Did you not then and there state to libellant that you could not allow libellant to go ashore at San Francisco until the said vigilance committee had been first informed of his being on board said steamer? and did not said libellant express his willingness that said vigilance committee should be so informed?

Fifth interrogatory. Did you not then and there state to libellant that in case you should meet the steamship Sonora bound to Panama, you should put or endeavor to place libellant on board said steamship Sonora, and did not said libellant object and protest against your so doing or attempting to do so?

Sixth interrogatory. Did you not on or about the 26th day of June, 1856, meet said steamer Sonora on her said voyage to Panama, and cause
16 her to be spoken? and did said steamer Sonora stop on being so spoken?

Seventh interrogatory. Did you or not, as master of said steamer, give any orders or directions to any person or persons on said steamer to take libellant and carry him off said steamer John L. Stevens and put him on board said steamer Sonora?

Eighth interrogatory. Did you not, as master of said steamer John L. Stephens, cause libellant, forcibly and against his will, to be taken from your steamer to the said steamer Sonora?

Ninth interrogatory. Did you not while said libellant was being transferred to said steamer Sonora see libellant and hear him address you? If yea, did you not hear him say to you that he was being forced on said steamer Sonora, that he was an American citizen, and that he would hold you responsible for your outrage on the high seas, or words to that effect?

17 Tenth interrogatory. Were you on the 23d, 24th, 25th, or 26th days of June, 1856, or at any time during the year 1856, a member, active or otherwise, of the vigilance committee of San Francisco, on the city of San Francisco.

CHAS. D. JUDAH, *Proctor for Lib't.*

On filing the foregoing libel and a stipulation for the indemnity of the defendant, R. H. Pearson, in the sum of five hundred dollars, and otherwise complying with the rules of the court, let a warrant of arrest issue in this cause against said defendant, R. H. Pearson, and let him be held to bail in the sum of ten thousand dollars.

San Francisco, August 13, 1860.

OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed July 27, 1860. W. H. CHEVERS, *Clerk.*

18 *Libellant's stipulation for costs.*

UNITED STATES OF AMERICA:

District court of the United States for the northern district of California.

Whereas a libel was filed in this court on the 27th day of July, in the year of our Lord one thousand eight hundred and sixty, against R. H. Pearson, for reason and causes in the said libel mentioned; and the said Charles P. Duane, and Michael Hayes and Isaac F. Denniston, his sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of said libellant or his sureties, execution may issue against their goods, chattels, and lands for the sum of five hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the libellant above named shall pay all costs and damage that shall be awarded against them in any decree by this court, or in case of appeal by the appellate court.

C. P. DUANE.
MICHAEL HAYS.
ISAAC F. DENNISTON.

19 Taken and acknowledged this 13th day of August, 1860, before me.
W. H. CHEVERS, *United States Commissioner.*

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

Michael Hays and Isaac F. Denniston, parties to the above stipulation, being sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

MICHAEL HAYES.
ISAAC F. DENNISTON.

Sworn to the 13th day of August, 1860, before me.

W. H. CHEVERS, *United States Commissioner.*

Filed the 13th day of August, 1860.

W. H. CHEVERS, *Clk.*

Warrant of arrest.

[SEAL.] The President of the United States of America to the marshal of the northern district of California, greeting:

Whereas a libel has been in the district court of the United States of
20 America for the northern district of California, on the 27th day of July, in the year of our Lord one thousand eight hundred and sixty, by Charles P. Duane against R. H. Pearson, in a certain action, civil maritime, for moneys alleged therein to be due and owing to the said libellant, amounting to fifty thousand dollars, and praying that a warrant of arrest may issue against the said defendant, and that he may be held to bail, pursuant to the rules and practice of this court: Now, therefore, we do hereby empower and strictly charge and command you, the said marshal, that you take and arrest the said respondent, if he shall be found in your district, and him safely keep, so that you may have his body before the said district court on the 11th day of September instant, then and there to answer the said libel and to make his allegations in that behalf, and have you then and there his writ with your return thereon.

Witness the Honorable Ogden Hoffman, judge of said court, this third day of September, in the year of our Lord one thousand eight hundred and sixty, and of our independence the 85th.

21 W. H. CHEVERS, *Clerk.*

CHAS. D. JUDAH, *Proctor.*

Endorsed: I hereby certify that in obedience to the within monition, I arrested the within-named R. H. Pearson, on the 8th day of September, 1860, and on the same day held to bail in the sum of ten thousand dollars, as herein directed.

San Francisco, Sept. 10th, 1860.

P. L. SOLOMON, *U. S. Marshal.*

Returnable 11th Sept., 1860.
Filed Sept. 11, 1860.

W. H. CHEVERS, *Clerk.*

The marshal will hold the respondent to bail in the sum of ten thousand dollars.

Dated Sept. 3, 1860.

W. H. CHEVERS, *Clerk.*

Bail bond of defendant.

District court of the United States for the northern district of California.

Stipulation entered into pursuant to the rules and practice of this court.

22 Whereas a libel was filed in this court, on the 27th day of July, A. D. 1860, by Charles P. Duane, against R. H. Pearson, for the reasons and

causes in said libel mentioned, and the said R. H. Pearson, and Frederick Griffin and Daniel S. Roberts, his sureties, the parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of said defendant or his sureties, execution may issue against their goods, chattels, and lands for the sum of ten thousand ($10,000) dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned are, and each of them is, bound in the sum of ten thousand ($10,000) dollars, conditioned that the defendant above named shall appear in the suit and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein in this court, or in any appellate court.

R. H. PEARSON.
FRED'K GRIFFIN.
23 DANIEL S. ROBERTS.

Taken and acknowledged this 3d September, 1860.

W. H. CHEVERS, *U. S. Com'r.*

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

I, Frederick Griffing and Daniel S. Roberts, parties to the within stipulation, being duly sworn, depose and each for himself, that he is worth the sum of ten thousand dollars ($10,000) over and above all his just debts and liabilities.

FRED'K GRIFFING.
DANIEL S. ROBERTS.

Sworn this third day of September, A. D. 1860.

W. H. CHEVERS, *U. S. Com'r.*

Endorsed: Filed Sept. 3d, 1860.

W. H. CHEVERS, *Clerk.*

Appearance of defendant.

District court of the United States for the northern district of California.

CHARLES P. DUANE, libellant,
vs.
ROBERT H. PEARSON, defendant.

24 GENTLEMEN: Please take notice that I appear in the above-entitled cause as proctor for the defendant therein above named, and the clerk of said court will please enter my appearance accordingly on the filing hereof.

Dated San Francisco, September 15, A. D. 1860.

HALL McALLISTER, *Proctor for Defendant.*

Endorsed: Due service upon me in San Francisco, this day, of a notice of which the within is a duplicate, is hereby admitted, and consent is hereby given that within notice be filed and the appearance of defendant be thereupon entered.

Dated San Francisco, September 17, A. D. 1860.

C. D. JUDAH, *Proctor for Libl't.*

Filed Sept. 18, 1860.

W. H. CHEVERS, *Clerk.*

25 *Exceptions to libel.*

In the district court of the United States in and for the northern district of California, in admiralty.

CHARLES P. DUANE, libellant,
vs.
ROBERT H. PEARSON, defendant.

To the Honorable Ogden Hoffman, judge of the United States district court for the northern district of California:

The exceptions of Robert H. Pearson to the libel of Charles P. Duane, libellant, allege as follows:

First exception.—That this honorable court has no jurisdiction of the matters contained in the said libel, the same not being matters of admiralty and maritime jurisdiction.

Second exception.—That this honorable court has no jurisdiction by a proceeding in personam of the matters contained in the said libel, the
26 same not being matters of admiralty and maritime jurisdiction by a libel in personam.

Third exception.—That the matters contained in said libel are insufficient to authorize the arrest of this defendant.

Fourth exception.—That the whole of the first article of said libel is irrelevant, immaterial, impertinant, and ought to be expunged.

Fifth exception.—That the whole of the second article of said libel is irrelevant, immaterial, and ought to be expunged.

Sixth exception.—That the whole of the fifth article of said libel subsequent to and including the words "that after being out from said port of Acapulco some two or three days, the said Pearson sent for libellant to call at his office, &c.," is irrelevant, immaterial, impertinent, and ought to be expunged.

Seventh exception.—That the allegation in the sixth article of said libel, in the words following, to wit, "that in being so transferred from steamer
27 to steamer, libellant hailed said Pearson, to which said Pearson replied, 'Well, sir,' or words to that effect." Libellant then said to him, 'My name is Duane; you have had me forced from your steamer on board, this steamer; I shall hold you responsible if I live through it," or words to that effect, which said Pearson made no reply," are irrelevant, immaterial, impertinent, and ought to be expunged.

Eighth exception.—That the whole of the eighth article of said libel is irrelevant, immaterial, impertinent, and ought to be expunged.

Ninth exception.—That the whole of the ninth article of said libel is irrelevant, immaterial, impertinent, and ought to be expunged.

Tenth exception.—That the whole of the tenth article of said libel is irrelevant, immaterial, impertinent, and ought to be expunged.

Eleventh exception.—That the whole of the eleventh article of said
28 libel is irrelevant, immaterial, impertinent, and ought to be expunged.

Twelfth exception.—That the whole of the thirteenth article of said article of said libel is irrelevant, immaterial, impertinent, and ought to be expunged.

Thirteenth exception.—And as a peremptory exception in bar of libellant's said libel, this defendant says that it appears upon the face of said libel that if the said libellant, Charles P. Duane, ever had any cause of action or libel against this defendant, for or concerning any of the matters in the said libel mentioned, (which this defendant does in no sort admit,) such cause of action or libel did accrue or arise above four years before the filing of the libellant's said libel, and above four years before serving or suing out process against

this defendant to appear to and answer the said libel, and above four years before serving or suing out a warrant of arrest against this defendant, and above four years before serving or suing out an attachment against
29 the goods and chattels, or credits and effects of this defendant, and that the said Charles P. Duane, libellant as aforesaid, was not at any time within upwards of four years before the filing of his said libel, or within upwards of four years before the serving or suing out of process against this defendant to appear to and answer the said libel, or within upwards of four years before the serving or suing out a warrant of arrest against this defendant or within upwards of four years before the serving or suing out an attachment against the goods and chattels, or credits and effects of this defendant, under any disability to sue or file a libel against this defendant.

That for upwards of four years before the filing of libellant's said libel this defendant was resident within the State of California, and within the aforesaid northern district thereof.

That if said libellant, Charles P. Duane, ever had any cause of action or libel against this defendant for or concerning any of the matters in the said libel mentioned, (which this defendant does in no sort admit,) such
30 cause of action or libel was at the time of the filing of libellant's libel and now is too stale a demand to be entertained by this honorable court, and that this appears upon the face of said libel. That by said libel it appears that each and all the alleged causes of action or of libel therein set forth against this defendant, accrued during the month of June, A. D. 1856, and that the said libel was filed on the twenty-seventh day of July, A. D. 1860.

That on the twenty-second day of April, 1860, a certain statute of the State of California, entitled "An act defining the time for commencing civil actions," was made and passed, which said statute has ever since been and still is in force.

That on the first day of May, 1851, a certain other statute of the State of California, entitled "An act to regulate proceedings in criminal cases," was made and passed, and that sections ninety-six, ninety-seven, ninety-eight, and one hundred of said last-mentioned statute, which relate to the time within which criminal actions may be commenced, have ever since been and still are in full force; that the rule of limitations by which this action ought
31 to be controlled, should be in accordance with the limitations established by said statutes, and that if these be adopted, or if either of them be adopted, as the law of this case, then this action cannot be maintained, by reason of the great lapse of time which has intervened between the accruing of the alleged causes of action set forth in said libel and the filing of the same.

And the defendant prays that all of foregoing exceptions may be allowed.

HALL McALLISTER, *Proctor for Defendant.*

Endorsed: Due service of a copy of the within exceptions is hereby admitted, and consent hereby given that said exceptions be filed.

January 7, 1861.

C. D. JUDAH, *Proctor for Lib't.*

Filed January 7, 1861.

W. H. CHEVERS, *Clerk.*

32 *Order overruling exceptions pro forma, and allowing 30 days to file answer.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San

Francisco, on Thursday, the 14th day of February, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The Honorable Ogden Hoffman, district judge.

CHARLES P. DUANE
vs.
J. T. WATKINS.

And now, on this day, this cause coming on to be heard on exceptions to the libel herein, and having been argued by the advocates of the respective parties, and due deliberation had in the premises, it is by the court ordered that the said exceptions be, and they are hereby, overruled pro forma, saving to counsel for the defendants the benefit of said exceptions at the hearing of this cause; and on motion of the proctor for respondents, ordered that he have 30 days from this date wherein to file answer.

Endorsed: Filed February 14, 1861.

W. H. CHEVERS, *Clerk.*

33 *Answer.*

In the district court of the United States in and for the northern district of California, in admiralty.

CHARLES P. DUANE, libellant,
vs.
ROBERT H. PEARSON, defendant.

The answer of Robert H. Pearson, of San Francisco, California, to the libel of Charles P. Duane, answers and alleges as follows:

First. That this defendant by interposing this answer does not intend to waive the exceptions to the libel of Charles P. Duane, heretofore filed in this action, but insists that each and all of said exceptions are well taken and should be adjudged good and valid.

Second. That if the said libellant, Charles P. Duane, ever had any cause of action or libel against this defendant for or concerning any of the matters in the said libel mentioned, (which the defendant does in no sort ad-
34 mit,) such cause of action or libel did accrue or arise above four years before the filing of libellant's said libel, and above four years before serving or suing out process against this defendant to appear to and answer the said libel, and above four years before serving or suing out a warrant of arrest against this defendant, and above four years before serving or suing out an attachment against the goods and chattels, or credits and effects of this defendant; and the said Charles P. Duane, libellant as aforesaid, was not at any time within upwards of four years before the filing of his said libel, or within upwards of four years before the serving or suing out process against this defendant to appear to and answer the said libel, or within upwards of four years before the serving or suing out a warrant of arrest against this defendant, or within upwards of four years before the serving or suing out an attachment against the goods and chattels, or credits and effects of this defendant, under any disability to sue or file a libel
35 against this defendant. That for upwards of four years before the filing of libellant's said libel this defendant was resident within the State of California, and within the aforesaid northern district thereof. That if said libellant, Charles P. Duane, ever had any cause of action against this defendant for or concerning any of the matters in the said libel mentioned, (which this defendant does in no sort admit,) such cause of action or libel was at the time of filing libellant's said sibel and now is too stale a demand to be entertained by this honorable court. That by said libel it appears that each and all the alleged causes of action or of libel therein set forth against this

defendant, accrued during the month of June, A. D. 1856, and that said libel was filed on the twenty-seventh day of July, A. D. 1860. That on the twenty-second day of April, 1850, a certain statute of the State of California, entitled "An act defining the time for commencing civil actions," was made and passed, which said statute has ever since been and still is in full force.
36 That on the first day of May, 1851, a certain other statute of the State of California, entitled "An act to regulate proceedings in criminal cases," was made and passed, and that sections ninety-six, ninety-seven, ninety-eight, ninety-nine, and one hundred of said last-mentioned statute, which relate to the time in which criminal actions may be commenced, have ever since been and still are in full force; that the rule of limitations by which this action ought to be controlled should be in accordance with the limitations established by said statutes, and that if these be adopted, or if either of them be adopted, as the law of this case, then this action cannot be maintained, by reason of the great lapse of time which has intervened between the accruing of the alleged causes of action set forth in said libel and the filing of the same.

Third. That this defendant is ignorant of the matters contained in the first article of said libel, and therefore holds the libellant to strict proof thereof, except that defendant knows that on or about the fifth day of June,
37 1856, libellant was a resident of the city and county of San Francisco; but defendant denies that on said fifth day of June, 1856, or for some years previous thereto, libellant was a good or law-abiding citizen of said San Francisco.

Fourth. That this defendant is ignorant of the matters contained in the second article of said libel, and therefor holds the libellant to strict proof thereof.

Fifth. That the defendant admits the truth of the matters set forth in the third article of said libel.

Sixth. That this defendant admits the truth of the matters set forth in the fourth article of said libel.

Seventh. That this defendant avers that the matters set forth in the fifth article of said libel are incorrectly and untruly alleged; and therefore he denies each and all of same, except so far as the same are hereinafter expressly admitted. That the truth is as follows: That the steamer John L.
38 Stephens, being under the command of defendant as master thereof, did on or about the *the* twenty-third day of June, 1856, leave the port of Acapulco, with a number of passengers bound for San Francisco. That libellant was not one of said passengers. That it is true that libellant left Acapulco at the time herein referred to in said steamer, but that he did so without the knowledge or consent of this defendant, or of any of the officers of said steamer, or of the agent of said steamer at Acapulco, or of any owner or agent of said steamer. That while said steamer was lying at Acapulco, on or about the 23 day of June, 1856, the libellant secretly, stealthily, and without any right or authority so to do, got on board of said steamer, and secreted himself therein as a "stow-a-way," and remained secreted on board as a "stow-a-way" from the time he so got on board as aforesaid until said steamer had departed from Acapulco and had been voyaging for several hours towards San Francisco. That soon after libellant abandoned
39 his concealment and appeared on the deck of said steamer, this defendant sent for him and told him, substantially, that he, libellant, had acted improperly in coming on board said steamer at Acapulco without a ticket, and without money to pay his passage; that he was a "stow-a-way," and should be put on board the first steamer the said John L. Stephens might meet bound for Acapulco. That at this time defendant had heard of the banishment of libellant from San Francisco by a large body of men called

"the vigilance committee," and had also heard that committee, which said said vigilance committee to the return of said libellant that libellant could from such banishment, was death. That thereupon desired in perfect freedom humane motives, and fully believing that said vigilance
the will and the power to execute such threatened penalty, letters set forth in libellant, substantially, that if he, libellant, returned to San Francisco and holds John L. Stephens, he would certainly be hung, and strongly advised against such return. That libellant thereupon expressed himself unwilling to take the risk of returning to San Francisco on said John L. Stevens. That the foregoing is substantially all that passed between libellant and this defendant at the time herein referred to. Defendant further alleges that during June, 1856, the owners of said John L. Stevens had an agency at said Acapulco, under the charge of one Van Brunt, where passage tickets for Panama and for San Francisco, by the said John L. Stevens and by other steamers of the line to which she belonged, were sold. That by the practice, usage, and rules which there prevailed, and still prevail, on said line of steamers, all passengers desiring passage on any steamer of said line, for any place whatever, were and are compelled to purchase their passage tickets at one of the agencies of said line before the departure of the particular steamer on which they desire to voyage, and in case any passenger failed so to purchase a passage ticket, then he was and is bound to pay his passsage money to the purser of such steamer previous to her departure on her voyage. And in case of any passenger failing so to purchase his ticket, and also failing to pay his passage money to such purser in the manner and at the time aforesaid, then, and in that event, any such delinquent had and has no rights as a passenger on board of any of the said steamers, and is liable to be treated as a "stow-a-way." That aforesaid practice, usages, and rules were well known to libellant at the time he stealthily got on board said John L. Stephens and secreted himself therein, and departed from Acapulco thereon, as aforesaid. Defendant further avers that libellant being a "stow-a-way," as aforesaid, ought during the time he remained on board said John L. Stephens, in June, 1856, to have been put to work as a coal passer in the coal-bunkers of said steamer, but that defendant, out of kind feeling to libellant, allowed him while he remained on said steamer to live in the second cabin thereof, and to have cabin fare. That the mode in which this kindness of defendant was repaid was by libellant's running up a wine bill, while enjoying the second cabin comforts and privileges of said steamer, and never paying the same.

Eighth. And as to the matters set forth in the sixth article of said libel this defendant says: He denies that any force or violence was used to compel libellant to leave said steamer John L. Stephens, or to go on board said steamer Sonora. That it is true had force been necessary it would have been used, but that libellant quietly submitted to the transfer, doubtless believing that resistance would be useless. That defendant denies that either he or libellant made the statements ascribed to them respectively in said sixth article; but defendant admits that after libellant reached the deck of the Sonora, he, this defendant heard him say "I protest against this," or something to that effect. That at the time herein referred to said steamer Sonora was commanded by Richard L. Whiting, as the master thereof; that when said Sonora met said John L. Stephens on the night of the twenty-sixth of June, 1856, and previous to the order of this defendant for the transfer of said libellant from said John L. Stevens to said Sonora, and previous to such transfer being effected, this defendant went in one of the boats of said John L. Stephens on board said Sonora, to consult with said Richard L. Whiting about the removal of libellant to said Sonora. That defendant then and there saw and consulted with said Richard L. Whi-

51 Stip... readily consented to the removal of said libellant
In the district court of ...uestly advised defendant to order and effectuate it.
...ated to defendant that great excitement existed in San
...vigilance committee had and exercised supreme control;
CHARLES P. DUANE, ...eady hanged several persons, and that should libellant re-
vs. ...ancisco in said John L. Stephens he would certainly be forth-
R. H. PEARSON. ...by said vigilance committee. That these views of said Whiting
coincided with the impressions defendant had derived from the San
44 Francisco newspapers, which he had obtained at Acapulco, and with his own convictions. That thereupon, this defendant regarding the libellant as a "stow-a-way" and as destitute of all right to remain on board the John L. Stephens, and influenced by the humane, just, and perhaps excusable motive of saving libellant's life, ordered his removal from said John L. Stephens to said Sonora, and sent the boat in which defendant had reached said Sonora to communicate said order to the first officer of said John L. Stevens, this defendant meanwhile remaining on board said Sonora. That after some time said boat returned to said Sonora with libellant; that defendant did not see or speak with libellant, but heard him as he reached the deck of the Sonora, say "I protest against this," or something to that effect; that thereupon defendant returned in said boat to said John L. Stephens, and proceeded on his voyage to San Francisco.

Ninth. And as to the matters set forth in the seventh article of
45 said libel, this defendant says: He denies that libellant was sick or without clothes, or in a state of bodily suffering, at or about the time of his said removal from said John L. Stephens to said Sonora. And as to the mental state of libellant at or about said time, and as to his having no friends on board said Sonora, this defendant has no knowledge, and therefore holds libellant to strict proof of his allegations as to those matters. And defendant denies that his acts referred to, or intended to be referred to, in said seventh article were illegal, or unjustifiable, or malicious.

Tenth. And defendant avers that he never was at any time a member of the vigilance committee of San Francisco, and denies each and all the allegations contained in the eighth article of said libel.

Eleventh. This defendant has no personal knowledge of the matters contained in the ninth article of said libel, and therefore holds the libel-
46 lant to strict proof thereof. And defendant says that he is not and has not been indemnified by the vigilance committee, or by any member of that body, or by any person or persons whomsoever, in the premises or against any consequences or liabilities which may result to him by reason of the matters alleged against him in this action, or any of them.

Twelfth. This defendant denies each and all the allegations contained in the tenth article of said libel except so far as the same have been hereinbefore expressly admitted.

Thirteenth. This defendant is entirely ignorant of the matters set forth in the eleventh article of said libel, and therefore denies the same and holds the libellant to strict proof thereof.

Fourteenth. That defendant admits the matters contained in the twelfth article of said libel to be true, except that he denies that libellant had rea-
son to believe from any conduct of this defendant that his, libellant's,
47 return to California would be impeded or resisted, or his life put in peril or jeopardy at any time after the disbanding of the vigilance committee and the voluntary breaking up of their active organization, which said disbanding and breaking up took place on or about ; and except that defendant denies that libellant had any good or reasonable ground for believing that his return to San Francisco would be impeded or resisted or his life put in peril or jeopardy at any time after libellant's sen-

"the vigilance committee," and had also heard that the penalty affixed by said vigilance committee to the return of said libellant to San Francisco, from such banishment, was death. That thereupon defendant, influenced by humane motives, and fully believing that said vigilance committee had both the will and the power to execute such threatened penalty, further stated to libellant, substantially, that if he, libellant, returned to San Francisco on said John L. Stephens, he would certainly be hung, and strongly advised libellant against such return. That libellant thereupon expressed himself as
40 willing to take the risk of returning to San Francisco on said John L. Stevens. That the foregoing is substantially all that passed between libellant and this defendant at the time herein referred to. Defendant further alleges that during June, 1856, the owners of said John L. Stevens had an agency at said Acapulco, under the charge of one Van Brunt, where passage tickets for Panama and for San Francisco, by the said John L. Stevens and by other steamers of the line to which she belonged, were sold. That by the practice, usage, and rules which there prevailed, and still prevail, on said line of steamers, all passengers desiring passage on any steamer of said line, for any place whatever, were and are compelled to purchase their passage tickets at one of the agencies of said line before the departure of the particular steamer on which they desire to voyage, and in case any passenger failed so to purchase a passage ticket, then he was and is bound to pay his passsage money to the purser of such steamer previous to her de-
41 parture on her voyage. And in case of any passenger failing so to purchase his ticket, and also failing to pay his passage money to such purser in the manner and at the time aforesaid, then, and in that event, any such delinquent had and has no rights as a passenger on board of any of the said steamers, and is liable to be treated as a "stow-a-way." That aforesaid practice, usages, and rules were well known to libellant at the time he stealthily got on board said John L. Stephens and secreted himself therein, and departed from Acapulco thereon, as aforesaid. Defendant further avers that libellant being a "stow-a-way," as aforesaid, ought during the time he remained on board said John L. Stephens, in June, 1856, to have been put to work as a coal passer in the coal-bunkers of said steamer, but that defendant, out of kind feeling to libellant, allowed him while he remained on said steamer to live in the second cabin thereof, and to have cabin fare. That the mode in which this kindness of defendant was repaid was by libellant's
42 running up a wine bill, while enjoying the second cabin comforts and privileges of said steamer, and never paying the same.

Eighth. And as to the matters set forth in the sixth article of said libel this defendant says: He denies that any force or violence was used to compel libellant to leave said steamer John L. Stephens, or to go on board said steamer Sonora. That it is true had force been necessary it would have been used, but that libellant quietly submitted to the transfer, doubtless believing that resistance would be useless. That defendant denies that either he or libellant made the statements ascribed to them respectively in said sixth article; but defendant admits that after libellant reached the deck of the Sonora, he, this defendant heard him say "I protest against this," or something to that effect. That at the time herein referred to said steamer Sonora was commanded by Richard L. Whiting, as the master thereof; that when said Sonora met said John L. Stephens on the night of the twenty-
43 sixth of June, 1856, and previous to the order of this defendant for the transfer of said libellant from said John L. Stevens to said Sonora, and previous to such transfer being effected, this defendant went in one of the boats of said John L. Stephens on board said Sonora, to consult with said Richard L. Whiting about the removal of libellant to said Sonora. That defendant then and there saw and consulted with said Richard L. Whi-

ting, who then and there readily consented to the removal of said libellant to the Sonora, and earnestly advised defendant to order and effectuate it. That said Whiting stated to defendant that great excitement existed in San Francisco; that the vigilance committee had and exercised supreme control; that they had already hanged several persons, and that should libellant return to San Francisco in said John L. Stephens he would certainly be forthwith hung by said vigilance committee. That these views of said Whiting coincided with the impressions defendant had derived from the San
44 Francisco newspapers, which he had obtained at Acapulco, and with his own convictions. That thereupon, this defendant regarding the libellant as a "stow-a-way" and as destitute of all right to remain on board the John L. Stephens, and influenced by the humane, just, and perhaps excusable motive of saving libellant's life, ordered his removal from said John L. Stephens to said Sonora, and sent the boat in which defendant had reached said Sonora to communicate said order to the first officer of said John L. Stevens, this defendant meanwhile remaining on board said Sonora. That after some time said boat returned to said Sonora with libellant; that defendant did not see or speak with libellant, but heard him as he reached the deck of the Sonora, say "I protest against this," or something to that effect; that thereupon defendant returned in said boat to said John L. Stephens, and proceeded on his voyage to San Francisco.

Ninth. And as to the matters set forth in the seventh article of
45 said libel, this defendant says: He denies that libellant was sick or without clothes, or in a state of bodily suffering, at or about the time of his said removal from said John L. Stephens to said Sonora. And as to the mental state of libellant at or about said time, and as to his having no friends on board said Sonora, this defendant has no knowledge, and therefore holds libellant to strict proof of his allegations as to those matters. And defendant denies that his acts referred to, or intended to be referred to, in said seventh article were illegal, or unjustifiable, or malicious.

Tenth. And defendant avers that he never was at any time a member of the vigilance committee of San Francisco, and denies each and all the allegations contained in the eighth article of said libel.

Eleventh. This defendant has no personal knowledge of the matters contained in the ninth article of said libel, and therefore holds the libel-
46 lant to strict proof thereof. And defendant says that he is not and has not been indemnified by the vigilance committee, or by any member of that body, or by any person or persons whomsoever, in the premises or against any consequences or liabilities which may result to him by reason of the matters alleged against him in this action, or any of them.

Twelfth. This defendant denies each and all the allegations contained in the tenth article of said libel, except so far as the same have been hereinbefore expressly admitted.

Thirteenth. This defendant is entirely ignorant of the matters set forth in the eleventh article of said libel, and therefore denies the same and holds the libellant to strict proof thereof.

Fourteenth. That defendant admits the matters contained in the twelfth article of said libel to be true, except that he denies that libellant had rea-
son to believe from any conduct of this defendant that his, libellant's,
47 return to California would be impeded or resisted, or his life put in peril or jeopardy at any time after the disbanding of the vigilance committee and the voluntary breaking up of their active organization, which said disbanding and breaking up took place on or about ; and except that defendant denies that libellant had any good or reasonable ground for believing that his return to San Francisco would be impeded or resisted or his life put in peril or jeopardy at any time after libellant's sen-

tence of banishment was revoked by said vigilance committee, which said revocation took place on the . And defendant avers that libellant could at any time after have returned to San Francisco in perfect freedom and safety, and that this the libellant well knew.

Fifteenth. That defendant is entirely ignorant of the matters set forth in the thirteenth article of said libel, and therefore denies the same and holds libellant to strict proof thereof.

48 Sixteenth. That defendant denies each and all the allegations contained in the fourteenth article of said libel.

Seventeenth. That all and singular the premises are true.

Wherefore the defendant prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise law and justice to administer in the premises.

R. H. PEARSON.

Sworn to before me this eleventh day of March, A. D. 1861.

CUTLER McALLISTER, *U. S. Com'r.*

In the district court of the United States in and for the northern district of California, in admiralty.

CHARLES P. DUANE, libellant,
vs.
ROBERT H. PEARSON, defendant.

49 Answer of Robert H. Pearson, defendant, to the interrogatories propounded to him in this cause.

To the first interrogatory he says: Yes.

To the second interrogatory he says: Yes.

To the third interrogatory he says: No.

To the fourth interrogatory he says: I have no recollection of this, and therefore say no.

To the fifth interrogatory he says: Yes; I said I would put him on board the Sonora. Libellant asked to go on the John L. Stevens. He did not protest. Said he would take the chances of returning to San Franc.

To the sixth interrogatory he says: Yes.

To the seventh interrogatory he says: Yes.

To the eighth interrogatory he says: Libellant was taken from my steamer against his will, but no force was used.

To the ninth interrogatory he says: It was dark, nine o'clock at
50 night. I did not see libellant. Did not hear him say anything till he reached the deck of the Sonora, then heard him say "I protest against this," nothing more.

To the tenth interrogatory he says: No, never.

R. H. PEARSON.

STATE OF CALIFORNIA, *Northern District, ss:*

Robert H. Pearson, the above-named defendant, being sworn, says that the foregoing answers subscribed by him are true.

R. H. PEARSON.

Sworn to before me this eleventh day of March, A. D. 1861.

CUTLER McALLISTER, *U. S. Com.*

Endorsed: Filed March 16, 1861.

W. H. CHEVERS, *Clerk.*

51 *Stipulation as to commission.*

In the district court of the United States in and for the northern district of California.

CHARLES P. DUANE
vs.
R. H. PEARSON.

It is hereby stipulated and agreed that the commissions this day ordered to issue in the several causes above entitled to F. Bailey Myers, esq., of the city of New York, a commissioner appointed by the said court to examine Doctor Hull, of the city and county of New York, a witness on the part of the several defendants in said actions, be embodied in one commission and one set of interrogatories, both to be entitled in the three actions above named, and that the commissioner therein named may be instructed to return one set of answers to said interrogatories entitled in the same manner, and that said commission, when returned, may be used on the several trials of above-entitled actions, subject, however, to all legal ex-
52 ceptions to the evidence taken under said commissions, and this stipulation to be taken without prejudice to libellant's right to move the trial of said actions when called or set down, nor as a stay of any proceedings on part of libellant, notwithstanding the issuance of said commissions.

Dated San Francisco, March 14th, A. D. 1861.

C. D. JUDAH, *Proctor for Libellant.*

Endorsed: Filed March 21, 1861.

W. H. CHEVERS, *Clerk.*

53 *Order for com'n to issue to examine Dr. Hull, of N. Y.*

In the district court of the United States in and for the northern district of California.

CHARLES P. DUANE
vs.
R. H. PEARSON.

In this cause, on motion of Hall McAllister, esq., proctor for defendant, Charles D. Judah, esq., proctor for libellant, appearing and objecting, and upon reading and filing the notice of this motion and the affidavit of Hall McAllister, esq., and proof of due service of copy of said notice and affidavit upon proctor for libellant, it is hereby ordered that a commission issue to the city of New York and be directed to T. Bailey Myers, esq., attorney-at-law, residing at said city of New York, to take the deposition of Doctor Hull, residing in said city of New York, as a witness in said cause on the part of defendant upon the interrogatories filed and served with said notice and affidavit to be annexed to said commission, the issuance of such commis-
54 sion in nowise to stay any proceedings on the part of the libellant nor the right of libellant to move at any time the trial of said cause or any of the causes referred to in the stipulation filed of even date herewith.

Signed San Francisco, March 14, 1861.

Endorsed: Filed March 21, 1861.

W. H. CHEVERS, *Clerk.*

In the district court of the United States for the northern district of California.

CHARLES P. DUANE
vs.
R. H. PEARSON.

The President of the United States of America to T. Bailey Myers, esq., greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you full power and authority to examine Doctor Hull, of the city and State of New York, as a witness in three certain causes depending in the district court of the United States in and for the northern district of California, wherein Charles P. Duane is libellant and R. H. Pearson, J. T. Watkins, and J. S. Watson and Charles Goodall are, respectively, defendants, on the part of the said defendants, upon oath, upon the interrogatories annexed to this commission, and to re-
56 turn the same annexed to this commission, unto the said court with all convenient speed, closed up with your seal.

Witness the Hon. Ogden Hoffman, judge of the said court, at the northern district of California, this twenty-first day of March, in the year of our Lord one thousand eight hundred and sixty-one.

[SEAL.] W. H. CHEVERS, *Clerk.*

Endorsed: The execution of this commission appears in certain schedules hereto annexed.

[SEAL.] T. BAILEY MYERS, *Commissioner.*

In the district court of the United States in and for the northern district of California, in admiralty.

CHARLES P. DUANE
vs.
ROBERT H. PEARSON.

57 Interrogatories to be administered to Doctor Hull, of the city and State of New York, a witness to be produced, sworn, and examined in a certain cause of admiralty and maritime jurisdiction now pending in the district court of the United States in and for the northern district of California, wherein Charles P. Duane is libellant and Robert H. Pearson is respondent, on the part and behalf of the respondent, before esq., the commissioner in the annexed writ named.

First interrogatory. What is your name, age, residence and occupation? How long have you resided in your present place of residence? If you state that you are by profession a physician, state to what school of medice, if to any, you belong; whether you have a regular license or diploma as a physician, and if yea, how long have you had the same, what is the date thereof and under what authority was the same issued, and how long you have practised by virtue thereof, and where, and whether you are a
58 general practitioner or otherwise, and if otherwise, how otherwise?

To the first interrogatory this defendant, answering, says: My name is Joseph J. Hull; I reside in the city of New York, and am a physician by occupation. I have resided in New York since May, 1857, as a permanent residence, but have been occasionally absent. I reside now and since the 28th day of April last, at and in the New York Hospital. I am a graduate of the University Medical College, of the city of New York. I have a regular license and diploma as a physician; I received it in March, 1858. The

date of the diploma, I think, was the seventh of March, but I cannot distinctly say as to the day, as my diploma is in Baltimore. It was issued under the authority of the faculty of the college, of the regents of the university and of its chartered powers from the legislature of the State of New York. I entered the hospital as assistant to the house surgeon, or
59 junior walker. I continued in that capacity until December, when I was promoted to senior walker, in which capacity I continued until August, 1859; then I became house surgeon and continued in that position until April, 1860. I then left the hospital to accompany U. S. troops to Utah as surgeon, from which I returned, by way of California, in November, 1860, and opened an office in January, at 85 East Seventeenth street, in New York City. Since April 28 I have resumed temporarily my position at the New York Hospital, and am now there. I am a regular practitioner; I belong to the regular alopathic school.

Second interrogatory. Do you know the libellant, Charles P. Duane? and if yea, state where and when and how long you have known him, and whether as his regular or occasional physician or otherwise, and if otherwise, how otherwise.

To the second interrogatory this deponent, answering, says: I know Charles P. Duane, as having been a patient in the hospital under our charge.
60 He came here on the 22d day of February, 1859, and remained until the eleventh day of August in the same year. I was senior assistant and had with Dr. Junnby, the house surgeon, charge of his case. It was my duty to keep a record of his case.

Third interrogatory. If in answer to the preceeding interrogatory you shall state that you have attended professionally the libellant, Charles P. Duane, state particularly at whose request you attended him professionally, how often, when and at what times you visited him professionally; when you were first called to attend him, how long you continued to call upon him professionally, and what was the nature, character, and cause of his illness and of how long standing, and what was the condition of his disease when you were first called to attend him. State fully and particularly.

To the third interrogatory this deponent, answering, says: From the
61 22d of February until the first Tuesday of April it was my tour of duty in the house where he was lying; after that I changed to this other house or division; between these dates I attended him professionally according to the rules of the hospital, applicable to all inmates. The nature, character, and cause of his illness was secondary and tertiary or constitutional syphilis; it had been standing for several years. At the time we took charge of him his body was covered with large syphilitic sores, and his limbs also, and he had almost complete paralysis of the lower limbs; this latter symptom was probably aggravated by the indolent habits attending and consequent on his disease. His system seemed to be entirely poisoned by disease, and was in such a condition as to account for the presence of almost any symptoms of debility or to develope any disease lying dormant in his system. His case was very tedious, the disease obstinate; many remedies had to be tried before a good effect was produced.

62 Fourth interrogatory. If in answer to any of the preceeding interrogatories you shall state that said libellant was in an hospital during any of the time you attended him professionally, state what hospital, and where situated, when the libellant was admitted into such hospital, and when he left the same; state the exact duties, and how you are able to arrive at them,

To the fourth interrogatory this deponent, answering, says: He was in the New York Hospital, in the south house; he entered on the 22d of Febru-

ary, 1859, and left on the 11th of August, 1859. I am exact as to the dates because I have referred to the records of the hospital. He was discharged as "relieved," his general health was better, his sores were mostly cured, and he could walk on crutches. He came to the hospital specifically for the disease I have mentioned; he complained of no other difficulties or of any injuries. All the symptoms he presented were those attributable to the disease he was suffering from.

63 Fifth interrogatory. Do you know of any other matter or thing material or necessary or that may tend to the benefit or advantage of the respondent in this cause? If yea, state the same, as fully and particularly as if you were thereunto specially interrogated.

To the fifth interrogatory this deponent, answering, says that he does not know of anything else material to either party.

J. J. HULL.

Examination taken and reduced to writing and by the witness subscribed and sworn to before me this second day of August, 1861.

[SEAL.] T. BAILEY MYERS, *Commissioner.*

Endorsed: Opened in open court and filed Aug. 14, 1862.

W. H. CHEVERS, *Clerk.*

64 *Notes of testimony.*

CHARLES P. DUANE
vs.
R. H. PEARSON.

Cook reads libel.

Charles P. Duane:

I am the libellant. Have resided in San Francisco since April 14, 1850; lived here in 1856; was attending to street grading contracts. Had just left the position of ch. engineer of fire department. Had served three terms; a fourth was offered to me and I refused it. I was sent away in 1856 by the vigilance committee. I was put on board a steam-tug in irons, taken outside the heads and put on board the Golden Gate. I objected to this; told the capt. I would hold him responsible. I went to Acapulco in the Golden Age; remained there eleven days. I took a small boat and went on board the John L. Stephens, of which the defendant was master. A person from Los Angelos, who had been rooming with me at Acapulco, was on

65 board; told me he had paid $100 for fare. Mr. Scott offered to let me have money to pay my fare; I told him I would rather wait and get Judge McAllister to pay my fare. Judge McA. talked with him about San Francisco affairs; told him how I had been sent away. He said he would pay my fare, and he went with me to the purser's office, and said to Mr. Schell, the purser, I want to pay this young man's fare to San Francisco. Mr. S. said the fare was $100, but that Capt. P , had directed him not to receive any fare from me. Judge McA. said if I could arrange it he was ready to pay my fare. I asked Schell why he wouldn't take fare from me. He said he was authorized by Capt. Pearson not to do so. I asked him why, He said he didn't know. I saw the man coming from the office with a ticket in his hand. I looked at the ticket.

What did it purport to be?

(Objected to.)

I went on board just after daylight. I was assisted on board by the

66 officers of the boat; took a drink with them; shook hand; they were glad to see me; gave me breakfast. Saw Capt. Pearson on board about

½ an hour after I got on board; saw him giving orders. I was publicly on deck conversing with many friends. I was more than an hour with the steward. He invited me into his room, opened a bottle of champaign. About four days after, when they came to take me off, I did secrete myself. When I first went on board I did so openly, walked the deck, conversed with the officers. Capt. Pearson and I were personally acquainted. After the purser refused my fare Capt. P. sent for me to come to his office I went to his office. He conversed with me about vigilance committee; stated that he was aware of excitement from the papers; that he considered himself one of the body and upheld their acts; wanted to know what I had been doing to make them treat me so. He said: Mr. Duane, I thought you were as well liked as any man in San Francisco, and that he had understood I had saved from destruction
67 the very steamer we were sailing in. He said he was very much surprised at the change, but that as a general thing he upheld their acts and didn't want to take me back to San Francisco. I told him I didn't know what I was sent away for. Don't know yet. He said he had seen the papers at Acapulco he would not have received me. He said that on his arrival he would not go alongside the wharf or suffer a passenger to land until he had informed the vigilance committee he had me on board. He said if he met the Sonora coming down he would put me on board. I told him I didn't object to his informing the V. C. of my arrival, for I intended to inform them myself, but as to putting me on board the Sonora it would be unlawful, and that I should hold him responsible for it. I told him I had many friends on board, and was ready to pay my fare; that Judge McA. had offered to pay it; had gone to the office with me for that purpose. Capt. P. said he would not receive it. This was between four and five p. m. I was in the purser's room for about one-half an hour before I offered my
68 fare. He was an acquaintance. He shook hands with me when I came in, asked me to take a drink; introduced me to some ladies.

Mr. Charles Scott, formerly treasurer of this county, who was a passenger, gave me his seat at the table; took three or four meals at that seat. Capt. P. dined at same table; sent a glass of wine to the persons in my company and to myself. After that the boy came and requested me to take a seat at the second-cabin table. Mr. Scott got very angry about it and insisted upon my taking his seat, but I declined. I took my meals regularly with the second-cabin passengers while I was on board. I had a berth assigned me. Everybody on board treated me with great kindness. I was on board four days. We met the Sonora in the Gulf of California. I saw her myself; called Cutler McAllister's attention to it; didn't want the capt. to see, her as I heard he intended to put me on board. I staid on deck until she got pretty close. I then went and asked some ladies I knew to allow me the use
69 of their room. They begged me not to go there. I then went down into the water-closet. The steamer was stopped out; saw all hands searching. After a while one of the men came and pulled the water-closet door open. He shouted, "Here he is;" "here he is." I got out of the window; drew myself along the promenade deck to where they stowed the cattle. They were wild; stuck their horns into me; got under the life-boat on the promenade deck; remained there about half an hour; finally hoisted the boat up; I jumped out; they rushed for me; about sixty or seventy were looking for me. I had a knife which a passenger lent me. I drew it and said I was ready to defend myself. Some fifty or one hundred rushed to my rescue; came between me and the parties searching for me, and I got through the crowd. On the promenade deck I met Cutler McAllister, who advised me not to resist, they were determined to take me. The parties in pursuit of me came up again. The first mate was in charge. I drew my knife again, determined to defend myself. The first mate said, "Charley, it isn't

70 my wish, but the capt. says I must do it." I said the capt. had no authority to seize me and put me off the steamer; that he, the mate, was hired to do other work than that; that if he touched me I certainly would kill him. I backed up so that they couldn't get behind me. The passengers appeared to arm themselves, and said they must not interfere with me; told me not to be afraid, they would defend me. I had to plead very hard to stop them; told them I didn't wish a mutiny on board on my account; saw the mate cocking his pistol; said, shoot away, you can't intimidate me. The passengers said, put up your pistol. I think he put it up. I remained in this position some 15 or 20 minutes. They couldn't get near me. I had made up my mind not to go living; allowed no one to get nearer to me than they were—about eight feet—neither as a friend nor in any other way.

71 Judge McAllister came through the crowd. He said: Duane, put your knife away; don't cut anybody, or the captain will hang you at the yard-arm, as he has done so before. Said he, I don't advise you to go, but don't cut anybody. I knew he was a friend. I took his advise; put my knife away, and cried like a child. I couldn't help it. They came and dragged me away to the side of the ship. There was a great confusion on board; passengers cried, "Shame!" "shame!" Judge McAllister said to the mate, "You shall be held responsible for this high-handed measure on the high seas." The passengers gathered around Judge McA., and his pleading prevented them from rescuing me. They took me down the ladder of the Stephens, put me in a small boat, and rowed to the Sonora; wanted me to go on board of her. I told them, no, I would not. On our way there the mate appeared to be very friendly. When we got to the ladder of the Sonora they took hold of me and dragged me up the ladder. I rushed immediately to the captain's office, then to the purser's office to notify them

72 I was being taken against my will. I rushed to the gangway. Capt. Pearson had just left the Sonora in a small boat. I called to him; told him I wold hold him responsible for forcing me on board the steamer, and to call on the passengers to recollect it. He made no reply. This was about 12 o'clock. I knew Capt. Whiting. He stated that he didn't know who it was that was to be put on board. I was treated very well on board the Sonora—as a first-cabin passenger; did not pay him anything; had nothing to pay him with; spent a good deal of my time in his room in conversation with him in a friendly way. The officers I thought paid more attention to me than any other passenger. I had no means when I went aboard, except a $20 gold piece which the steward of the Stephens slipped in my hands as I was going down the ladder. I have since returned it to him. My health was not very good. I had been sick at Acapulco of the yellow fever; no one to attend me; no means. Mr. Scott gave some underclothes when

73 I got on board the Stephens. I had not entirely recovered my strength when I got on board the Stephens. We went to Acapulco; lay there four or five hours; went ashore there; made arrangements with a schooner, but he found I had been sent away by V. C. and he declined because the vessel belonged to some gentleman on Front street, who was a member, and the captain did not dare to take me. I then applied to Van Brunt, the agent of the Pacific M. S. S. Co., for a passage to San Francisco. He refused it. I applied in good faith for a passage. I then returned to the Sonora. I was in debt at Acapulco to the hotel at which I had been staying. I went on the Sonora to Panama. Capt. Whiting sent for me to come on deck. He said that the governor had notified him not to land Charles Duane unless he went right through on the cars. He said that the governor understood I was coming down with two hundred men to protect American passengers; that I was sent away ahead of my men as a pretence. I

74 asked Whiting what I should do; whether he would take me back. He said he was told not to bring me back before he left San Fran-

cisco. I again asked his advice. He recommended me to go right across and go on to N. Y. I told him I had no means. He gave me a note to the captain of the steamer on the Atlantic, asking him, as a special favor, to take me on to N. Y. I went ashore and remained there two months. I understood that there was an English steamer from Panama to Callao, and that I could get a passage from there to Callao. I did all I could to get a passage to Callao, but they wouldn't take me as I hadn't money to pay my passage. My object was to get to San Francisco. I went to the hotel. I was arrested by five military officers under suspicion that I was coming down to take the city, and that my being sent away by the V. C was a ruse. I invited them to take a glass of wine. They got drunk and left me. The next day they came and took me to
75 the fort as a prisoner. They took me to the yard. I sent to the American consul. He had some communication with them, and they let me go on my parole that I wasn't there for any hostile purpose. I found the next day that there was a guard which followed me everywhere. I remained at the hotel about five days. I was turned out as a bad man, and sent away by the vigilance committee. I could not get any permanent place to live after that. I was watched in the streets. I called to see the American consul and related the circumstances. He sent a note to the agent of the Pacific M. S. S. Co., to take me back, and he would be responsible for me. He refused. Mr. Ward, the consul, went to see him himself, but could nothing with him. He then sent me with a note to the American Hotel, and they gave me a lodging. He sent me $2 50 by his little son. I then went to Aspinwall on the locomotive; the engineer was a friend of mine. I met a friend at Aspinwall, who let me have $18. I paid $15 to take the Ten-
76 nessee for N. Y., at Nicaragua; she was gone. The Pacific M. S. S. Company ship stopped in. I obtained a passage on her for Aspinwall. I went in her to Aspinwall and thence to Panama. I remained there; boarded all the steamers that came down; tried to get back; applied on the Sonora and the Stephens; tried to speak to Capt. Pearson, but he wouldn't speak to me or let me speak to him. I applied to Capt. Dall, who was then mate of the Stephens; told him of my condition. He got me up a nice lunch, which I ate with him. Capt. Pearson was not on board at the time. Capt. Dall said it was impossible for him to arrange to take me. I then went ashore. I remained at Panama until the next time got in; went aboard, found there was no chance to get back. Finally I crossed to Aspinwall; delivered my letter, and the capt. refused to take me. I informed him of my condition, that they wouldn't take me on the other side, and I had no means to live on the isthmus. He refused. I offered to pay him when I got to N. Y. I told him he had no heart and that I couldn't live on the isthmus,
77 and that the place was not big enough for us both to live in. He sent after me, telling me that he had concluded to take me. I went aboard, stayed there about an hour; the agent came aboard, saying there were twelve or fourteen of the passengers who wouldn't travel with me, and I must go ashore. I told him I had no means to live on ashore. I was in my state-room and determined to go. He got the firemen, coal-heavers, about twenty men, to put me out. I drew my knife; told them that the first man who came in I would kill; that they might take me dead but not alive. The captain then came; said he had charge of the vessel left the wharf, but at present she was in hands of the agent. He said the case had been related to him; that he was sorry any man was in such a position; that if I would go ashore he would give me a passage from there to N. Orleans, and thence to N. Y. I said I would go if he would give the names of the persons who objected to travel with me. The capt. assented to this; walked out and addressed
78 several persons, members of the V. C., but as soon as he spoke to them they shot off. He came back and said to me: "Mr. Duane, I

believe you to be a gentleman; go, I'll protect you." I went to N. Y. I had not entirely recovered my strength. I was worried. The night I left Panama Mr. Backus let me have $20; this was, with what I have already mentroned, all the money I got until my arrival in N[illegible]. I had at that time more than $20,000 here. The city owed me $7,000. It has paid me $2,872 since my return. I remained at New York and at the E[illegible]t until February 6, 1860. I then returned to this city on the Stephens, in the [illegible] cabin.

Cross-examination waived for examination of Theodore L. Schell:

I was purser of the Stephens. We heard of the proceedings of the V. C. at our arrival at Acapulco. Tickets were sold generally at the offices
79 of the agents, both at San Francisco and Acapulco, and at Panama. If we find a man on board without a ticket the purser issues one. We usually search the ship for stow-a-ways before leaving the port, as the gangways are not guarded. At Acapulco and Panama they are guarded. Ticket are always furnished at the office, and a way-bill furnished the purser, with the names of passengers; also at Acapulco. If stow-a-ways are found, purser reports to captain. They are treated according to circumstances; usually make them work their passage. They were frequently transferred to one of our steamers going back to where we started from. Persons usually come on board from Acapulco with tickets from the agent, Mr. Van Brunt. If they haven't a ticket they are not allowed on board. Libellant did not come for a ticket from me until the vessel left. Immediately after the vessel left I went to the barber shop; was engaged about an hour, and on returning to my room found Duane there. He told me he was without means. I don't remember that any money was tendered to me. I don't
80 see how Duane could have got on board, if the officer had done his duty at the gangway. Capt. Pearson went on board the Sonora before Duane was transferred. He was gone, perhaps, an ½ an hour before he sent orders to bring Duane on board. The steamer arrived at Acapulco some time in the night; left in the morning.

Cross-examined.

Capt. Pearson told me not to receive any pay from any of the vigilance committee exiles, and to report to him if they came on board. I think I knew Duane was one of them when I first saw him. I immediately reported to Capt. Pearson that he was on board. I don't recollect that he then told me not to receive his fare from any one. He had told me so I think. I frequently collected fare from passengers who came on board at Acapulco without tickets. Don't recollect that I collected such fare on this trip.

81 *Direct resumed.*

The pursers are furnished with tickets in blank, and they are obliged to account for them. They are to be given to passengers who came on board without any.

Cross resumed.

I should certainly have taken Mr. Duane's fare if he had offered it, had I received no instructions from the capt. Mr. Duane did not pay anything for his fare or expenses while on board. I never heard of any one being treated as a stow-a-way, and refused merely because he came on board without a ticket.

C. P. Duane recalled:

About daylight I got a boat; the gang plank was down. I went up; an officer stood at the head of it; took me by the hand, called me by name; asked me how I got down there; talked awhile; left somebody in his place; took me to his rooms; took a drink with me. They all knew *knew* me, and
82 were very friendly with me. After leaving his room I went on deck; saw Mr. Schell; shook hands with me. The mate was particularly glad to see me; ordered me a nice breakfast; this was before the vessel started.

Cross-examination.

Mr. Schell did not ask me for any ticket; nor did the man at the gangway take me to the purser. I never expected to be refused a passage. I knew that they knew me; that I was responsible; besides I had lent to several of the officers hundreds of dollars, and they were very friendly with me.

DUANE
vs.
PEARSON.

SECOND DAY.

Admitted that respondent has been in employ of Pacific M. S. S. Co. since 1850.

Charles P. Duane cross-ex'd:

83 At the time I left I held no office in the fire department. The V. C. had absolute control here at that time. They had hung two men. I was told that if ever returned it was under penalty of death. This sentence was in writing, and read to me. I was sent away on 5 June. Don't remember the date of transfer to Sonora. Went to Capt. Pearson's office on the first day I got on board the Stephens. My means in San Fran'co consisted of city scrip—comptroller's warrants to the amount of $3,000 or $4,000—issued in part for my salary. I could have got 75 c. on the dollar. I borrowed $1,200 on it. I applied to Mr. Nesbitt for it. He said the interest had eaten it all up. Wrote to my brother; he said he had never received the letter. I had a debt against the city for $7,000; one claim for $2,800 had already been passed upon; it was for expenses in the corporation yard and building cisterns. One of these claims has since been paid under
84 an act authorizing and requiring them to pay the claim, or as much as they may deem just and equitable. Had a lot in the suburbs; also a lot on Sutter street; only possession—no title—situated between Stockton and Powell; took possession of it in 1854. My property out of town is now worth $40,000; it was then worth $20,000. Got a free passage from P. M. S. S. Co. I arrived here on the last day of February, 1860. I was sick for some time. Applied to counsel as soon as I could get; was advised that I couldn't sue as long as Judge Hoffman was at the East. I believe I got my claim through the board of supervisors before commencing the suit.

Direct resumed.

My $4,000 claim before the supervisors has been referred to a committee; not acted upon.

John C. Waters:

Was a passenger on the Stephens; am a miner; never lived in this city; am here accidentally on a visit. I saw there was some confusion on
85 board. Some of the passengers said Mr. Duane was going to be put off. I heard the mate say he'd get his pistol and see that he was put

off. Passengers flocked to the side. Saw Duane come along in charge of several of the waiters and officers. He stopped and protested against the conduct of the officers; said he had a right to travel on the boat, as it was a public boat. The Sonora was lying to a little way off. There was a good deal of sympathy for him. One of the passengers, Judge McA., said he would see justice done to Mr. Duane when he got to San Francisco.

Christopher C. Dall:

I am a seaman; have been in P. M. S. S. Co.'s employment from 1851 to 1862; was first officer of the Stephens in 1856. Libellant came on board and took lunch with me at Panama, on my invitation; (objected.) When Capt. Pearson found it out he found fault with it; asked me if I was
86 not aware who he was, and how he was sent away; that Duane came on board, and that I was about taking lunch with the engineer, and I asked him in; that Duane had been very kind to my brother, had saved his life; and unless I received orders to the contrary I should ask him to lunch with me if he was on board at lunch time. The captain then ordered me not to let him come on board; that he was a bad man, and had been sent away by the vig. committee. I have now Duane since 1845.

Cross-examined.

This conversation occurred at Panama, the next trip after Duane had been put on board the Sonora.

Frederick E. Kohler:

Have been here since July, 1849. After the fire in 1849 was appointed chief engineer of fire department, for the purpose of organizing it; resigned in August, in 1851. He was a fireman, assistant engineer, and chief
87 engineer. Have known Duane since 1847; never knew anything against him. I had heard he had been a very wild young man, but nothing against his character. At the time he was sent away his character and associates were good. Have heard of his getting into fights, but whose fault it was I don't know. Have heard of his shooting a Frenchman. I thought at the time he was justified. I went on his bond for $15,000.

Christopher Dall recalled:

I never knew anything against Duane's character. He was wild, like most young men. Heard he was a good fireman; rather smart; ready for a fight.

Stipulation admitting that Judge McAllister offered to pay fare of Duane to purser, and had the means of doing so, and it was refused.

88 Respondents call W. F. Babcock:

Was agent for P. M. S. S. Co. between eight and nine years, from February, 1854, to Nov., 1862. There never was any resolution passed allowing ch. engineer free passage. While I was in the office the practice was to search the steamer in the stream or at the wharf, and put ashore or collect fares from stow-a-ways.

James Dow:

Was a member of ex. committee of vigilance committee. All the sentences of the committee were recorded. Duane was banished, like many others, not to return under severest penalty, I don't know whether the word "death" was mentioned. There was a great excitement here at the time.

I, for one, tho't it arose from bad men obtaining office corruptly, and
89 using it for corrupt means. The better class of the community were driven to take revolutionary measures to remedy the evil summarily. Four men were executed by the committee. Two before Duane left and two after. The committee had a very large number of men under arms—several thousand—four or five or six thousand enrolled men, with cannon and arms. They arrested whom they pleased. On a rumor that Duane had returned a large number of armed were sent to arrest him. A general order was issued to our ch. ex. officer to have a force detailed on the arrival of vessels, to see that no exiles returned, and if so, to seize them; (objected.) This organization continued through June and July, 1856. The penalty was rescinded some time afterwards. It takes a steamer seven days to come from Acapulco to this port. It would have been far more dangerous for the exiles to
90 have returned in the early part of the excitement than later. From the tone of feeling among the masses composing the committee I really believe that one of the exiles who had returned would have executed very summarily. I don't remember the specific crime charged against Duane. The first charge was general bad character. They considered ballot-box stuffing one of the highest crimes. One of the recent acts of Duane was drawing a pistol at the polls and threatening deportment. I have not thought of these matters since they occurred. At the time he was sent away I considered his general reputation was very bad; and so considered by all respectable people. He was a turbulent man; went armed; and for an imaginary offence or insult would draw and shoot. He was connected with a corrupt set of politicians, and being rather a weak man, could be induced, under the influence of liquor, to commit gross acts of violence. He was a man of fine physical qualifications for his weight. His reputation was very high
91 in the science of pugilism.

Cross-examined.

I was a member of the former committee. The vigilance committee of 1856 was a new organization. They probably banished a dozen persons. I don't know that any of them returned immediately. I think Gallagher returned before the order was rescinded. My memory is considerably obliterated as to these transactions. I said positively that the only charge against was not that he had said Sullivan was killed by the vigilance committee and did not commit suicide. I cannot say at what election Duane was charged with drawing a pistol at the polls, nor at what polls, nor in what year. I don't recollect any of the circumstances connected with the transaction. He was sentenced on general bad character; and my impression is there was one recent act of outrage. I don't recollect any charge of ballot stuffing; but he was charged with violent interference with elections,
92 that was the drawing of a pistol at the polls. I don't remember the name of single witness who testified against him, or that charges were furnished him. I don't think he was present at any investigation of the charges. In capital cases the accused were always present. The committee disbanded in August. I have heard a great many speak of Duane's character; heard Stephen Card speak of him as being a bad man and a dangerous man, who would shoot on a trivial occasion and on an imaginary insult. Heard Abel Guy speak of him as a bad man; he was generally armed. I carried arms at that time. He had been chief engineer for two terms. The fire department is composed of fair men. I have no unkind feelings against Duane personally; but I do think he was pretty bad man. Mr. Duane was convicted on his antecedents and general character. The executive committee heard the evidence and made up the sentence. We reached

the people through captains of companies, who were regarded as dele-
93 gates. In capital cases the accused were brought before the committee. Judge Terry was tried on his antecedents; they were pretty bad, but not quite so bad as Duane's. Duane was always regarded as a very efficient engineer.

(Gallagher's libel filed 29 March, 1858; arrived here in November, 1856. Record produced.)

The vigilance committee were disbanded in August.

Isaac N. Bluxome:

I was secretary of vigilance committee. Capt. Pearson was not a member to my knowledge; never heard of his being one. We watched all the steamers until the death penalty was taken off. I think the committee disbanded about four months after their organization. I think if one of the exiles had returned the committee would have been called together. My impression is that at the time Sullivan committed suicide a rumor came
94 up that he was kicking up a fuss at the dead-house saying, was it too bad that he should be murdered by the vigilance committee. My impression is that was the principal charge against him. I was not at the trial; it was taken before an evidence committee.

Deposition of Dr. Hull offered in evidence.

Libellants call C. P. Duane:

(Objected.) Mr. Dows told me that the Frenchman had a pistol, and I must look out for me. I was visited in my cell, and asked to give my oath not to bear arms against the vigilance committee; and the doors were open. Case offered me, on part of ex. committee, $3,000 to go East. Dr. Ashe and Judge Terry sent to me to say anything to them so as to get out. Capt. Dall waited three days for me in the Oregon to take me off to Oregon.
95 Money was offered me to go; this was before I was arrested.

Endorsed: Filed Oct. 26, 1863.

W. H. CHEVERS, *Clerk.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the ninth day of December, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The Honorable Ogden Hoffman, district judge.

Decree.

CHARLES P. DUANE, libellant,
vs.
R. H. PEARSON, defendant.

96 This case having been heard on the pleadings and proofs, and having been argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the defendant, Robert H. Pearson, pay to the libellant the sum of four thousand dollars, with his costs to be taxed.

It is further ordered that summary judgment be, and the same is hereby, entered against Robert H. Pearson, the above-named defendant, and Frederick Griffin and Daniel S. Roberts, his stipulators, for the said sum of four thousand dollars, and costs as aforesaid, and that execution issue therefor.

OGDEN HOFFMAN, *District Judge.*

Endorsed: Filed Dec. 9, 1863.

W. H. CHEVERS, *Clerk.*

97 *Notice of appeal.*

In the district court of the United States, northern district of California.

CHARLES P. DUANE, libellant,
vs.
R. H. PEARSON, defendant.

Take notice that the defendant intends to appeal from the final decree of the court in this cause.

Dated San Francisco, Dec'r, A. D. 1863.

H. & C. McALLISTER, *Proctors for Def't.*

To ELISHA COOK, *Proctor for Libellant; and*
W. H. CHEVERS, Esq., *Clerk of said Court.*

Endorsed: Filed Dec. 10, 1863.

98 *Appeal.*

In the circuit court of the United States for the northern district of California.

R. H. PEARSON, appellant and defendant,
vs.
CHARLES P. DUANE, appellee and appellant.

To the honorable the circuit court of the United States for the northern district of California:

The appeal of the above-named appellant respectfully showeth that on or about the 27th day of July, A. D. 1860, the above-named libellant, Charles P. Duane, exhibited his libel in the district court of the United States for the northern district of California, against this appellant, claiming over fifty dollars, and praying, among other things, for the reasons set forth in said libel, that this appellant might be condemned to pay the demands of said libellant and costs in said libel mentioned. That process, issued out of said
99 court, having been served on this appellant, Robert H. Pearson, he did on or about the 16 day of March, A. D. 1861, file his answer to said libel in the said district court, the time of answering said libel having been extended until said last-mentioned date by stipulations in writing, signed by the proctor for said libellant, praying that the said libel be dismissed with his costs in that behalf, as by reference to said libel and said answer may more fully appear. That the said cause came on to be heard before the Honorable Ogden Hoffman, judge of the said district court, on or about the 23d, 26th, and 27th days of October, A. D. 1863, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties, and the said judge having advised thereon, on the day of December, A. D. 1863, made a final decree or sentence in said cause, whereby it was, among other things, sentenced and decreed that the libellant
100 in said cause do have and recover against the appellant the sum of four thousand dollars damages for the wrongs and injuries in the aforesaid libel to have been committed by this appellant against said libellant, together with the costs of this action, amounting to the sum of .

And the appellant is advised, and insists, that the said decree is erroneous, inasmuch as the said libellant is not entitled to any damages whatsoever in the premises.

And this appellant, for this and other reasons, appeals from the whole of said decree in favor of said libellant, Charles P. Duane, to the next circuit court to be held in the said northern district of California, and on the said appeal he intends to have the said cause heard anew in said circuit court, to

make new allegations, and to file amended answer therein, and to introduce the same and new and further proofs. And he prays that the record and proceedings may be returned to the said circuit court, and that the
101 said decree may be reversed or such other decree therein made as to said circuit court shall seem just, and that said appellee may be condemned to pay to said appellant his costs and damages in the premises.

Dated San Francisco, Dec'r , 1863.

Endorsed: I hereby acknowledge service upon me this day of a copy of written appeal.

Dated San Francisco, Dec'r 10, 1863.

ELISHA COOK, *Proctor for Libellant.*

Filed Dec'r 10, 1863.

W. H. CHEVERS, *Clerk.*

Stipulation on appeal.

In the district court of the United States, northern district of California.

CHARLES P. DUANE, libellant and appellee,
vs.
RICHARD H. PEARSON, defendant and appellant.

102 Whereas an appeal has been taken from the decree of this court, made on the ninth day of December, A. D. 1863, in the above-entitled cause, wherein Charles P. Duane is libellant against Robert H. Pearson, defendant, by the said defendant:

Now, therefore, the stipulators undersigned hereby stipulate in the sum of nine thousand dollars to pay all damages and costs which shall be awarded against the said appellant by the final decree rendered by the appellate court.

DANIEL S. ROBERTS.
GEORGE A. F. JANSEN.

Taken and acknowledged this 14th day of December, 1863, before me.

W. H. CHEVERS, *U. S. Com.*

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

Daniel S. Roberts, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of nine thousand dollars over and above all his just debts and liabilities, exclusive of property exempt from execution, and that he is a resident in said district.

DANIEL S. ROBERTS.

103 Sworn to before me this 14th day of Dec'r, A. D. 1863.

W. H. CHEVERS, *U. S. Com.*

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

George A. F. Jansen, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of nine thousand dollars over and above all his just debts and liabilities, exclusive of property exempt from execution, and that he is a resident in said district.

GEORGE A. F. JANSEN.

Sworn to before me this 14 day of Dec'r, A. D. 1863.

W. H. CHEVERS, *U. S. Com.*

I hereby approve of the sufficieney of the above stipulation, the libellant objecting thereto.
Dec'r 14, 1863.

W. H. CHEVERS, *U. S. Com.*

Approved Dec'r 14, 1863.

OGDEN HOFFMAN, *District Judge.*

104 Endorsed: Filed Dec. 14, 1863.

W. H. CHEVERS, *Clerk.*

Clerk's certificate.

I, W. H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify the foregoing consecutively numbered ninety-six pages to be a transcript of the record of the said district court in the case of Charles P. Duane, libellant, against Robert H. Pearson, defendant, made up pursuant to Admiralty Rule No. 53, December term, 1854, of the Supreme Court of the United States.

In testimony whereof, I have hereunto signed my name and affixed the seal of the said court this fourth day of January, A. D. 1864, and of our independence the eighty-eighth.

[SEAL.] W. H. CHEVERS, *Clerk.*

Transcript endorsed: Filed Jan. 6, 1864.

HENRY C. HYDE, *Clerk.*

105 *Clerk's certificate of appeal.*

U. S. district court, nor. dist. of Cal., in admiralty.

ROB'T H. PEARSON, resp'n't and appellant,
vs.
CHARLES P. DUANE, libellant and appellee.

I, W. H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify that the appeal from the decree of the said court in the above-entitled cause to the circuit court of the United States for the nor. dist. of California has been made and perfected.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, this 14th day of December, A. D. 1863.

[SEAL.] (Signed) W. H. CHEVERS, *Clerk.*

Endorsed: Filed Dec. 14th, 1863.

HENRY C. HYDE, *Clerk.*

106 *Appearance for appellee.*

U. S. circuit court in and for the State of California.

R. H. PEARSON, appellant,
vs.
CHARLES P. DUANE, appellee.

We hereby appear as proctors for the appellee in the above-named cause.

COOK & HETHEL, *Proctors for Appellee.*

Endorsed: Filed June 9th, 1864.

HENRY C. HYDE, *Clerk.*

108 *Notice to place cause on the calendar.*

In the U. S. circuit court in and for the northern district of California, in admiralty.

CHAS. P. DUANE, appellee,
vs.
ROB'T H. PEARSON, appellant.

To the clerk of this court:

Please place above cause upon calendar for trial for the June term, A. D 1864.

Yours, &c.,

COOK & HITHELL,
Proctors for Appellees.

Endorsed: June 9th, 1864.

HENRY C. HYDE, *Clerk.*

110 *Order setting cause for June* 21, 1864.

At a regular term of circuit court of the United States of America in and for the northern district of California, held at the court-house, in the city of San Francisco, on the 13th day of June, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable Stephen J. Field, associate justice of the U. S. Supreme Court; the Honorable Ogden Hoffman, U. S. district judge.

ROBERT H. PEARSON
vs.
CHARLES P. DUANE. } In admiralty.

On consent of Messrs. McAllister & Cook, cause set for Tuesday, June 21, 1864.

112 *Amended answer.*

In the circuit court of the United States for the northern district of California.

ROBERT H. PEARSON, appellant and defendant,
vs.
CHARLES P. DUANE, appellee and libellant.

The amended answer of Robert H. Pearson, of San Francisco, California, to the libel of Charles P. Duane, answers and alleges as follows:

First. That this defendant by interposing this amended answer does not intend to waive the exceptions to the libel of Charles P. Duane, heretofore filed in this action, but insists that each and all of said exceptions are well taken and should be adjudged good and valid.

Second. That if the said libellant, Charles P. Duane, ever had any cause of action or libel against this defendant for or concerning any of the matters in the said libel mentioned, (which this defendant does in no sort admit,) such cause of action or libel did accrue and arise above four years
113 before the filing of the libellant's said libel and above four years before serving or suing out process against this defendant to appear and answer the said libel, and above four years before serving or suing out a warrant of arrest against this defendant, and above four years before serving or suing out an attachment against the goods and chattels or credits and effects of this defendant; and the said Charles P. Duane, libellant as aforesaid was not at any time within upwards of four years before the filing of his said libel, or within upwards of four years before the serving or suing out process against this defendant to appear to and answer the said libel,

or within upwards of four years before the serving or suing out a warrant of arrest against this defendant, or within upwards of four years before the serving or suing out an attachment against the goods and chattels or credits and effects of this defendant, under any disability to sue or file a libel against this defendant. That for upwards of four years before the filing of libellant's said libel this defendant was resident within the State of California and within the aforesaid northern district thereof. That if said libellant,
114 Charles P. Duane, ever had any cause of action against this defendant for or concerning any of the matters in the said libel mentioned, (which this defendant does in no sort admit,) such cause of action or libel was at the time of the filing of libellant's said libel, and now is, too stale a demand to be entertained by this honorable court. That by said libel it appears that each and all the alleged causes of action or of libel therein set forth against this defendant occurred during the month of June, A. D. 1856, and that said libel was filed on the twenty-seventh day of July, A. D. 1860. That on the twenty-second day of April, 1850, a certain statute of the State of California, entitled "An act defining the time for commencing civil actions," was made and passed, which said statute has ever since been and still is in full force. That on the first day of May, 1851, a certain other statute of the State of California, entitled "An act to regulate proceedings in criminal cases," was made and passed, and that sections ninety-six,
115 ninety-seven, ninety-eight, ninety-nine, and one hundred of said last-mentioned statute, which relate to the time within which criminal actions may be commenced, have ever since been and still are in full force; that the rule of limitations by which this action ought to be controlled should be in accordance with the limitations established by said statute, and that if these be adopted, or if either of them be adopted, as the law of this case, then this action cannot be maintained, by reason of the great lapse of time which has intervened between the accruing of the alleged causes of action set forth in said libel and the filing of the same.

Third. That this defendant is ignorant of the matters contained in the first article of said libel, and therefore holds the libellant to strict proof thereof, except that defendant knows that on or about the fifth day of June, 1856, libellant was a resident of the city and county of San Francisco; but defendant denies that on said fifth day of June, 1856, or for some years pre-
116 vious thereto, libellant was a good or law-abiding citizen of said San Francisco.

Fourth. That this defendant is ignorant of the matters contained in the second article of said libel, and therefore holds the libellant to strict proof thereof.

Fifth. That this defendant admits the truth of the matters set forth in the third article of said libel.

Sixth. That this defendant admits the truth of the matters set forth in the fourth article of said libel.

Seventh. That this defendant avers that the matters set forth in the fifth article of said libel are incorrectly and untruely alleged, and therefore he denies each and all of same, except so far as the same are hereinafter expressly admitted. That the truth is as follows: That the steamer John L. Stephens, being under the command of defendant as master thereof, did,
117 on or about the twenty-third day of June, 1856, leave the port of Acapulco with a number of passengers bound for San Francisco; that libellant was not one of said passengers; that it is true libellant left Acapulco at the time herein referred to, in said steamer, but that he did so without the knowledge or consent of this defendant, or of any of the officers of said steamer, or of the agent of said steamer at Acapulco, or of any owner or agent of said steamer; that while said steamer was lying at Acapulco,

on or about the twenty-third day of June, 1856, the libellant secretly, stealthily, and without any right or authority so to do, got on board of said steamer and secreted himself therein as a "stow-a-way," and remained secreted on board as a "stow-a-way" from the time he got on board as aforesaid until said steamer had departed from Acapulco and had been voyaging for hours towards San Francisco;
118 that soon after libellant abandoned his concealment and appeared on the deck of said steamer and told him, substantially, that he, libellant, had acted improperly in coming on board said steamer at Acapulco without a ticket and without money to buy his passage; that he was a "stow-a-way," and should be put on board the first steamer the said John L. Stephens might meet bound for Acapulco; that at this time defendant had heard of the banishment of libellant from San Francisco by a large body of men called the vigilance committee, and had also heard that the penalty affixed by said vigilance committee to the return of libellant to San Francisco from such banishment was death; that thereupon defendant, influenced by humane motives and fully believing that said vigilance committee had both the will and the power to execute such threatened penalty, further stated to libellant, substantially, that if he, libellant, returned to San Francisco on said
119 John L. Stephens he would certainly be hung, and strongly advised libellant against such return; that libellant thereupon expressed himself as willing to take the risk of returning to San Francisco on said John L. Stephens; that the foregoing is, substantially, all that passed between libellant and this defendant at the time herein referred to. Defendant further alleges that during June, 1856, the owners of said John L. Stephens had an agency at said Acapulco under the charge of one Van Brunt, where passage tickets for Panama and for San Francisco by said John L. Stephens and by the other steamers of the line to which she belonged were sold; that by the practice, usage, and rules which then prevailed and still prevail on said line of steamers all passengers desiring passage on any steamer of said line for any place whatever, were and are compelled to purchase their passage tickets at one of the agencies of said line before the departure of the particular steamer on which they desire to voyage, and in case any passenger failed so to purchase a passage ticket, then he was and is bound to pay his passage money to the purser of such steamer previous to her departure on her voyage. And in case of any passengers failing so to purchase
120 his tickets, and also failing to pay his passage money to such purser in the manner and at the time aforesaid, then and in that event any such delinquent had and has no rights as a passenger on board of any of the steamers of such line and is liable to be treated as a "stow-a-way;" that aforesaid practice, usages, and rules are well known to libellant at the time he stealthily got on board said John L. Stephens and secreted himself therein and departed from Acapulco thereon as aforesaid.

Defendant further avers that libellant being a "stow-a-way" as aforesaid ought, during the time he remained on board said John L. Stephens in June, 1856, to have been put to work as a coal passer in the coal-bunkers of said steamer, but that defendant, out of kind feeling to libellant, allowed him while he remained on said steamer to live in the second cabin thereof, and to have cabin fare; that the mode in which this kindness of defendant was repaid was by libellant running up a wine bill while enjoying the second cabin comforts and privileges of said steamer and never paying the same.

Eighth. And as to the matters set forth in the sixth article of said libel this defendant says he denies that any violence or force was used by him or by his orders to compel libellant to leave said steamer John L. Stephens or to go on board of said steamer Sonora; that it is true had force been
121 necessary it would have been used, but that libellant quietly submitted to the transfer, doubtless believing that resistance would be useless;

that defendant denies that either he or libellant made the statements ascribed to them respectively in said sixth article, but defendants admits that after libellant reached the deck of the Sonora, he, this defendant, heard him say, "I protest against this," or something to that effect; that at the time herein referred to said steamer Sonora was commanded by Richard L. Whiting as the master thereof; that when said Sonora met said John L. Stephens, on the night of the 26th June, 1856, and previous to the order of this defendant for the transfer of said libellant from said John L. Stephens to said Sonora, and previous to such transfers being effected, this defendant went in one of the boats of said John L. Stephens on board said Sonora, to consult with said Richard L. Whiting about the removal of libellant to said Sonora; that defendant then and there saw and consulted with said Richard L. Whiting, who then and there readily consented to the removal of libellant to the Sonora, and earnestly advised defendant to order and effectuate it; that said Whiting stated to defendant that great excitement existed in San
122 Francisco, that the vigilance committee had and exercised supreme control, that they had already hanged several persons, and that should libellant return to San Francisco in said John L. Stephens he would certainly be forthwith hung by said vigilance committee; that these views of said Whiting coincided with the impressions defendant had derived from the San Francisco newspapers, which he had obtained at Acapulco, and with his own convictions. That thereupon this defendant, regarding the libellant as a "stow-a-way," and as destitute of all right to remain on board the John L. Stephens, and influenced by the humane, just, and perhaps excusable motive of saving libellant's life, ordered his removal from said John L. Stephens to said Sonora, and sent the boat in which defendant had reached said Sonora to communicate said orders to the first officer of said John L. Stephens, this defendant meanwhile remaining on board said Sonora. That after some time said boat returned to said Sonora with libellant; that defendant did not see or speak with libellant, but heard as he reached the deck of the Sonora say, "I protest against this," or something to that effect; that thereupon defendant returned in said boat to said John L. Stevens and proceeded on his voyage to San Francisco

123 Ninth. And as to the matters set forth in the seventh article of said libel this defendant says he denies that libellant was sick, or without clothes, or in a state of bodily suffering, at or about the time of his said removal from said John L. Stevens to said Sonora, and as to the mental state of libellant at or about said time and as to his having no friends on board said Sonora this defendant has no knowledge, and therefore holds this libellant to strict proof of his allegations as to those matters. And defendant denies that his acts referred to or intended to be referred to in said seventh article were illegal, or unjustifiable, or malicious.

Tenth. And defendant avers that he never was at any time a member of the vigilance committee of San Francisco, and denies each and all the allegations contained in the eighth article of said libel.

Eleventh. This defendant has no personal knowledge of the matters contained in the ninth article of said libel, and therefore holds the libellant to strict proof thereof. And defendant says that he is not and has not been indemnified by the vigilance committee, or by any member of that
124 body, or by any person or persons whomsoever, in the premises or against any consequences or liabilities which may result to him by reason of the matters alleged against him in this action, or of any of them.

Twelfth. This defendant denies each and all the allegations contained in the tenth article of said libel, except so far as the same have been hereinbefore expressly admitted.

Thirteenth. This defendant is entirely ignorant of the matters set forth in the eleventh article of said libel, and therefore denies the same, and holds the libellant to strict proof thereof.

Fourteenth. That defendant admits the matters contained in the twelfth article of said libel to be true, except that he denies that libellant had reason to believe from any conduct of this defendant that his, libellant's, return to California would be impeded or resisted, or his life put in peril or jeopardy, at any time after the disbanding of the vigilance committee and the voluntary breaking up of their active organization, which said disbanding and breaking up took place on or about the ; and except that de-
125 fendant denies that libellant had any good or reasonable ground for believing that his return to San Francisco would be impeded or resisted, or his life put in jeopardy, at any time after libellant's sentence of banishment was revoked by said vigilance committee, which said revocation took place on the . And defendant avers that libellant could at any time after , have returned to San Francisco in perfect freedom and safety, and that this the libellant well knew.

Fifteenth. That defendant is entirely ignorant of the matters set forth in the thirteenth article of said libel, and therefore denies the same, and holds libellant to strict proof thereof.

Sixteenth. That defendant denies each and all the allegations contained in the fourteenth article of said libel.

Seventeenth. And for a further, and separate, and complete defence to all of the matters averred in said bill this defendant says that the libellant heretofore, to wit, on the twenty-fourth day of July, A. D. 1860, instituted
126 an action in the district court of the United States in and for the northern district of California, as a court of admiralty, wherein he, the said Charles P. Duane, was libellant, and one James T. Watkins, master of the steamship Golden Age, and one J. S. Watson, first mate of said steamship Golden Age, were defendants; which said action was for the same cause of action, and counted upon the very same identical matters which are set up in the libel herein against this defendant, and was founded upon the same alleged abduction and exile of libellant from the State of California, and upon the same alleged forcible removal of libellant from the steamship John L. Stephens, and upon the same alleged forcing of libellant on board the steamship Sonora, and upon the same alleged ding of libellant to Panama forcibly and against his will mentioned in the libellant herein, and for which damages are sought of this defendant in this present action.

And defendant further avers that such proceedings were thereupon had in said action of Charles P. Duane, as libellants, against said James T. Watkins and said J S. Watson, as defendants; that afterwards, to wit,
127 on the twentieth day of November, A. D. 1861, the said Charles P. Duane, as libellant, by the consideration and decree of said district court of the United States in and for the northern district of California, setting as a court of admiralty, recovered in the said last-mentioned action upon the merits thereof, against the said James T. Watkins and said T. S. Watson two thousand dollars for his damages which he had sustained for and by the reason of the very same identical matters and the very same alleged injuries and wrongs which are charged against this defendant in the libel herein, as by the record and proceedings of said action of Charles P. Duane against said James T. Watkins and said J. S. Watson, still remaining in the said last-mentioned court, fully appeals; that thereafter said decree was paid and satisfied by said James T. Watkins and said J. S. Watson, or by one of them; and this the defendant is ready to verify by the said record. And therefore this defendant avers, if the said Charles P. Duane ever had any cause of action or libel against him, for or by reason of any

of the matters in the said libel herein mentioned, said cause of ac-
128 tion or libel has been discharged and released by the payment and satisfaction of aforesaid decree in the suit of said Charles P. Duane, as libellant, against said James T. Watkins and J. S. Watson, as defendants.

Eighteenth. That all and singular the premises are true.

Wherefore the defendant prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise law and justice to administer in the premises.

R. H. PEARSON.

Subscribed and sworn to before me this 16th day of June, A. D. 1864.
W. H. CHEV'S, *U. S. Comm'r, Nor. Dist. Cal.*

H. & C. McALLISTER, *Proctors for Def't and Appellant.*

129 In the circuit court of the United States for the northern district of California.

ROBERT H. PEARSON, appellant and defendant,
vs.
CHARLES P. DUANE, appellee and libellant.

Anwers of Robert H. Pearson, defendant, to the interrogatories propounded to him in this cause.

To the first interrogatory he says: Yes.

To the second interrogatory he says: Yes.

To the third interrogatory he says: No.

To the fourth interrogatory he says: I have no recollection of this, and therefore say no.

To the fifth interrogatory he says: Yes; I said I would put him on
130 board the Sonora. Libellant asked to go on the John S. Stevens. He did not protest; said he would take the chance of returning to San Francisco.

To the sixth interrogatory he says: Yes.

To the seventh interrogatory he says: Yes.

To the eighth interrogatory he says: Libellant was taken from my steamer against his will, but no force was used.

To the ninth interrogatory he says: It was dark; nine o'clock at night. I did not see libellant. Did not hear him say anything till he reached the deck of the Sonora; then heard him say: "I protest against this." Nothing more.

To the tenth interrogatory he says: No, never.

R. H. PEARSON.

STATE OF CALIFORNIA, *Northern District, ss:*

132 Robert H. Pearson, the above-named defendant, being duly sworn, says that the foregoing answers subscribed by him are true.

R. H. PEARSON.

Sworn and subscribed to before me this sixteenth day of June, 1864.
W. H. CHEVERS, *U. S. Comm'r, Nor. Dist. Cal.*

Endorsed: Filed June 16th, 1864.

HENRY C. HYDE, *Clerk.*

134 At a regular term of the circuit court of the United States of America in and for the northern district of California, held at the court-house, in the city of San Francisco, on Tuesday, the 21st day of June, in the year of our Lord one thousand eight hundred and sixty-four.

Present: Hon. Stephen J. Field, associate justice of the U. S. Supreme Court.

ROBERT H. PEARSON, app'l't,
v.
CHAS. P. DUANE, app'lee. } In admiralty.

And now, at this day, this cause being called for hearing upon the appeal from the U. S. dist. court of this district, come the parties thereto with their counsel into court, Hall McAllister, esq., for appellant, and Elisha Cook, esq., for appellee, and the trial duly proceeded, counsel having expressly consented, in open court, to the introduction of oral testi-
136 mony. C. H. Hewitt, J. B. G. Isham, Theo. L. Schell, Thos. J. L. Smiley, and R. H. Pearson were sworn and examined as witnesses on the part of appellant, and Charles P. Duane, the appellee, was sworn and examined as a witness in his own behalf. The evidence being closed the argument of this cause was reserved until Monday next, the 27th day of June, 1864.

138 At a regular term of the circuit court of the United States of America in and for the northern district of California, held at the court-house, in the city of San Francisco, on Monday, the 27th day of June, in the year of our Lord one thousand eight hundred and sixty-four.

Present: Hon. Stephen J. Field, associate justice of the U. S. Supreme Court.

ROBERT H. PEARSON, appellant,
v.
CHARLES P. DUANE, appellee. } In admiralty.

And now, at this day, the argument of this cause having been continued from the 21st day of June, 1864, until this day, came the parties to this cause, by their respective counsel, Hall McAllister, esq., for appellant, and E. Cook, esq., for appellee; and the argument was duly proceeded
139 with, and being concluded the cause was submitted to the court.

140 *Order for decree.*

At a regular term of the circuit court of the United States of America, in and for the northern district of California, held at the court-house, in the city of San Francisco, on Monday the 22nd day of August, in the year of our Lord one thousand eight hundred and sixty-four.

Present: Hon. Stephen J. Field, associate justice U. S. Supreme Court; Hon. Ogden Hoffman, U. S. district judge.

CHARLES H. PEARSON, appellant and defendant,
vs.
CHARLES P. DUANE, appellee and libellant. } In admiralty.

And now this cause having been heretofore submittted upon proofs and pleadings and arguments of counsel, and due deliberation having been had in the premises, it is ordered that the decree of the district court
141 of the northern district of California be, and it is hereby, in all things affirmed with costs.

142 *Decree.*

Circuit court of the United States, northern district of California, June term, 1864, in admiralty.

CHARLES P. DUANE, libellant and appellee,
vs.
ROBERT H. PEARSON, respondent and appellant. } No. .

This cause having been heard at the present term of the circuit court, on appeal from the district court of the United States for the northern district

of California, on the transcript of the record of said court, and the pleadings and the proofs taken therein, and other proofs introduced in this court and the arguments of the respective proctors, and submitted to the court, and due deliberation being had in the premises, and the court having ordered that the decree of said court in favor of said libellant be affirmed with costs, and that a decree be entered accordingly:

Now, therefore, by virtue of the law, and by reason of the prem-
143 ises, it is ordered, adjudged, and decreed by the court that the libellant, Chas. P. Duane, herein do have and recover of the said Robert H. Pearson the sum of four thousand dollars, ($4,000,) together with his costs to be taxed. And it is further ordered, adjudged, and decreed by the court that a summary judgment be, and the same is hereby, entered against Robert H. Pearson, the above-named respondent and appellant, and Frederick Giffing and Daniel S. Roberts, his stipulators, for the said sum of four thousand dollars, ($4,000,) and costs aforesaid, and the taxed costs of suit, and that execution issue therefor.

Decree entered this 1st day of Sept., A. D. 1864.

GEO. C. GORHAM, *Clk*,
Per W. T. HUESTIS, *Dep. Clk.*

Dated San Francisco, August 22nd, 1864.

144 *Order extending time to file statement.*

U. S. circuit court, northern district of California.

ROB'T H. PEARSON, def't and appellant,
vs.
CHARLES P. DUANE, pl'ff and appellee.

Upon motion of H. & C. McAllister, proctors for appellant, it is hereby ordered that the appellant in the above-entitled action have ten days further time from this date in which to file a statement of the testimony on the appeal to the Supreme Court of the United States.

San Francisco, August 27th, 1864.

(Signed) FIELD, *J.*

Endorsed: Filed Aug. 27th, 1864.

GEO. C. GORHAM, *Clk*,
P. W. F. HUESTIS, *D. C.*

146 *Marshal's bill of costs.*

Northern district of California, United States district court.

CHARLES P. DUANE
vs.
R. P. PEARSON. } U. S. marshal's costs.

Sep. 3, 1860.	To arresting defendant	$2 00
	attendance before commissioner	2 00
	proclamation	30
	bond	50
June 21, 1864.	To serving subpœna on W. T. Coleman	50
	serving subpœna on E. V. Gillispie	50
		5 80

Endorsed: Filed Sept. 6, 1864.

GEO. C. GORHAM, *Clerk*,
Pr. W. T. HUESTIS, *D. C.*

148 *Order extending time to file statement.*

U. S. circuit court, northern district of California.

ROB'T H. PEARSON, def't and appellant,
vs.
CHARLES P. DUANE, lib'l't and appellee.

On motion of H. & C. McAllister, proctors for appellant, it is hereby ordered that the appellant in above-entitled action have ten days further time, from this date, in which to file a statement of the testimony on appeal to the Supreme Court of the United States, under and in accordance with the rules of this court.

Dated San Francisco, Sept. 6, 1864.

FIELD, *J.*

Time extended, as above, five days, Sept. 17, 1864.

(Signed) E. COOK, *Proctor for Libellant.*

Endorsed: Filed Sept. 6, '64.

GEO. C. GORHAM, *Clk,*
P. HUESTIS, *D. C.*

150 *Appellee's bill of costs.*

In the circuit court of the United States, northern district of California.

CHARLES P. DUANE
vs.
R. H. PEARSON.

Clerk's costs, paid by libellant	$10 00
Witnesses' fees	66 00
Interest on $4,000 from Dec. 9th, 1863, to date, at 10 p'r c't,	266 00.
Total	76 00

STATE OF CALIFORNIA, *City and County of San Francisco.*

Charles P. Duane, being duly sworn, says the items, as charged in the above bill, are correct, according to the best of deponent's knowledge and belief.

C. P. DUANE.

Subscribed and sworn to before me this 5th day of September, A. D. 1864.

W. H. CHEVERS, *U. S. Com'r.*

Endorsed: Filed Sept. 6th, 1864.

GEO. C. GORHAM, *Clk,*
P'r W. F. HUESTIS, *D. C.*

152 *Notice of appeal.*

In the circuit court of the United States in and for the northern district of California.

ROBERT H. PEARSON, defendant and appellant,
vs.
CHARLES P. DUANE, libellant and appellee.

To Messrs. Cook & Hittell, proctors for the appellee, and to the clerk of said court:

Please take notice that the above-named defendant intends to appeal to the

Supreme Court of the United States from the judgment rendered herein on first day of September, A. D. 1864.

San Francisco, September 7th, 1864.

H. & C. McALLISTER, *Proctors for D'f't and Appl'e.*

Endorsed: Filed Sep. 9, 1864.

GEO. C. GORHAM, *Cl'k,*
P'r HUESTIS, *D. C.*

153 Service of a copy of the within notice upon us this 9th day of September, 1864, admitted.

San Francisco, Sept. 9th, 1864.

COOK & HETTAL, *Proctors for Libellant,*
Per MR. BENNETT.

154 In the Supreme Court of the United States.

ROBERT H. PEARSON, appellant and defendant,
vs.
CHARLES P. DUANE, appellee and libellant.

To the honorable the Supreme Court of the United States:

The appeal of Robert H. Pearson, the above-named defendant and appellant, respectfully showeth that on the 27th day of July, A. D. 1860, the above-named libellant, Charles P. Duane, filed his libel in the district court of the United States for the northern district of California, against the above-named defendant, Robert H. Pearson, in a cause civil and maritime, for the
155 recovery of personal damages alleged to have been sustained by him; and that defendant was arrested upon process issued upon said libel, and was discharged upon entering into the necessary stipulation; and defendant thereafter filed an answer to said libel, and such proceedings were had in the said cause that on the 9th day of December, A. D. 1863, a final decree was made and pronounced therein by the said district court, wherein it was in substance adjudged that the said libellant recover against the said defendant the sum of four thousand dollars and costs; and that after such final decree your petitioner duly appealed therefrom to the circuit court of the United States in and for the northern district of California; and the said cause was removed thereby into the said circuit court and there tried anew; and such proceedings were had in the said circuit court that afterwards, on the 1st day of September, A. D. 1864, the said circuit court made a
156 final decree in said cause, whereby it was decreed that the said decree of the district court be in all things affirmed, with costs; and that the said appellee have execution; and that the stipulators cause their stipulations to be fulfilled; which said decree of said circuit court is, as this appellant is advised, erroneous, and ought to be reversed. Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the said circuit court and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay; and that the said Supreme Court will proceed to hear the said cause anew; and that the said decree of the circuit
157 court, and every part thereof, may be reversed and a decree made dismissing said libel, with costs, or such other decree as to the said Supreme Court shall seem just.

Dated San Francisco, September 7th, 1864.

R. H. PEARSON.

H. & C. McALLISTER, *Proctors for Appellant.*

159 Filed Sept. 9, 1864.

GEO. C. GORHAM, *Cl'k,*
P'r HUESTIS, *D. C.*

160 *Bond on appeal to Supreme Court.*

In the circuit court of the United States for the northern district of California.

ROB'T H. PEARSON, defendant and appellant,
vs.
CHARLES P. DUANE, libellant and appellee.

Know all men by these presents that we, Robt. H. Pearson, Lloyd Tevis, and George Jansen, of the city and county of San Francisco, State of California, are held and firmly bound unto the above-named Charles P. Duane in the sum of ten thousand dollars, to be paid to the said appellee, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this seventh day of September, A. D. one thousand eight hundred and sixty-four.

161 Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the northern district of California:

Now, thereof, the condition of this obligation is such that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

(Signed) R. H. PEARSON. [L. S.]
(Signed) LLOYD TEVIS. [L. S.]
(Signed) GEORGE JANSEN. [L. S.]

Sealed and delivered, and taken and acknowledged, this 7th day of September, A. D. 1864, before me.

(Signed) W. H. CHEVERS, *U. S. Commissioner.*

UNITED STATES OF AMERICA, *Northern District of California, ss:*

Lloyd Tevis and George Jansen, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of ten thousand dollars over and above all his first debts and liabilities.

(Signed) LLOYD TEVIS.
(Signed) GEORGE JANSEN.

162 Sworn to this seventh day of September, 1864, before me.

(Signed) W. H. CHEVERS, *U. S. Commissioner.*

I approve the above bond and the sufficiency of the sureties thereto.
September 7th, 1864.

(Signed) FIELD, *J.*

Endorsed: Filed Sept. 9, 1864.

GEO. C. GORHAM, *Clerk,*
Per HUESTIS, *D. C.*

164 *Citation.*

In the circuit court of the United States in and for the northern district of California.

ROBERT H. PEARSON, defendant and appellant,
vs.
CHARLES P. DUANE, libellant and appellee.

The Honorable Stephen J. Field, judge of the circuit court of the United States for the northern district of California, in the tenth circuit, to Charles P. Duane, libellant and appellee.

Whereas Robert H. Pearson, defendant and appellant, has lately appealed

to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the northern district of California, in the tenth circuit, made in favor of you, the said Charles P.
165 Duane, against the said Robert H. Pearson, and has filed the security required by law, you are therefore cited to appear before the said Supreme Court, at the city of Washington, on the first Monday in December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city and county of San Francisco, in the northern district of California, the tenth day of September, A. D. 1864, and of the independence of the United States the eighty-ninth.

(Signed) FIELD, *J.*

Endorsed: Filed Sept. 10, '64.

GEO. C. GORHAM, *Clerk.*

166 *Statement on appeal.*

In the circuit court of the United States in and for the northern district of California.

CHARLES P. DUANE, libellant and appellee,
vs.
ROBERT H. PEARSON, defendant and appellant.

Statement of testimony.

This cause having been brought up on appeal from the district court of the United States in and for the northern district of California came on for trial in this court on the 21st day of June, A. D. 1864, and in addition to the proofs and evidence adduced by the parties hereto in the said district court, and read on the trial of said cause in this court as contained in the transcript from said district court, defendant and appellant offered herein
167 and read in evidence the transcript from the district court of the United States in and for the northern district of California, in the suit of Charles P. Duane *vs.* J. T. Watkins *et al.*, and the depositions of C. H. Hewett, J. B. G. Isham, Theodore Schell, T. J. L. Smiley, and R. H. Pearson, which said depositions were taken in open court and reduced to writing by the clerk thereof, by consent of the parties to this suit, and which said transcript and depositions are hereto annexed.

Libellant and appellee also offered and read in evidence the deposition of Charles P. Duane, taken by consent, as above set forth, which said deposition is hereto annexed.

168 In admiralty.

Transcript in case Charles P. Duane vs. *J. T. Watkins et al.*

To the Honorable Ogden Hoffman, judge of the United States district court for the northern district of California, in admiralty:

The libel of Charles P. Duane, a resident of the city and county of San Francisco, State of California, within said district, against J. T. Watkins, who lately was and now is master and commander of the steamship Golden Age, an American vessel; J. S. Watson, late chief mate, or first officer of said steamship, in a case of spoliation and personal damage, civil and maritime, alleges as follows:

First. That on or about the fifth day of June, A. D. 1856, libellant being an American citizen, was a resident of the city and county aforesaid, where he had resided for several years previously, and was a man of good charac-

ter and reputation, well known as such in the community where he had
169 lived, and was engaged in prosecuting his business from which he obtained a livelihood.

Second. That on the morning of the fifth of June, A. D. 1856, at about the hour of two o'clock, libellant being on board of a tug-boat or steamer called the Hercules, then lying in the waters of the bay of San Francisco, and within the ebb and flow of the sea, was unlawfully, wickedly, maliciously and forcibly, and against his will, and without cause or previous warning, kidnapped, abducted, and carried out of said bay of San Francisco, in and upon said steamer Hercules, to the high seas, near to and off the entrance and "heads" of the port of San Francisco.

Third. That during all said time libellant was tightly secured with iron or steel handcuffs, placed upon his wrists by an armed band of kidnappers, who were on board of said steamer Hercules, numbering some hundred or more.

Fourth. That said persons, the kidnappers on board said steamer Hercules, had charterd and employed or used said steamer as a tender or
170 waiting vessel to said steamer Golden Age, so commanded by said J. T. Watkins, and of which steamer the said J. S. Watson was the first officer; that said armed band of men kept strict watch and guard over libellant in the manner and condition aforesaid, causing said steamer Hercules to be kept in waiting at the place aforesaid, on the high seas, until the arrival of said steamer Golden Age, commanded as aforesaid.

Fifth. That said J. T. Watkins, commander, and said J. S. Watson, first officer of said steamer Golden Age, did combine and confederate with said kidnappers or persons on board said steamer Hercules before described, to join and aid them in completing and carrying out the nefarious, forcible, wicked, and malicious intention and design of abducting and kidnapping libellant, and conveying him out of said State, and from his home and country, and it was agreed and understood by them that the said steamer Golden Age, commanded as aforesaid, was to be used as a means for effecting such intention and design.

Sixth. That on said fifth day of June, 1856, in pursuance of said combination and confederation, intention and design, the said J. T. Watkins, as master and commander of the said steamer Golden Age, the said J. S. Watson, acting in the capacity aforesaid, proceeded in said steamer out
171 of the harbor of San Francisco, towards the heads, or entrance of the port of San Francisco, and causing said steamer to deviate from her usual course, run towards and approached to within about one hundred yards of the place where said steamer Hercules was lying in waiting, when said Watkins, master as aforesaid, caused said steamer Golden Age to be stopped and kept in waiting for the accomplishment and carrying out the aforesaid malicious and wicked design of abducting, kidnapping, and forcibly carrying away of the libellant.

Seventh. That upon the stoppage and lying in waiting aforesaid of said steamer Golden Age, the said kidnappers on board said steamer Hercules, acting in concert with the said J. T. Watkins and Watson, procured a row-boat and forced libellant to get into it against his will and ineffectual resistance, and carried him towards the steamer Golden Age.

172 Eighth. That on approaching said steamer Golden Age in said boat the said J. T. Watkins, master and commander, was at his customary post on the wheel house of said steamer giving directions, and the said Watson, first officer, at the gangway; that being within speaking and hearing distance of said Watkins and Watson, libellant stood up in said row-boat, and in presence of a large number of persons congregated upon the side of said steamer, in a loud and distinct tone of voice, addressed said Watkins as follows: "Commodore Watkins, you are commander of this steamer. I

am an American citizen, and am about to be forced on board of her. I shall hold you responsible for taking me out of my country if you do it, and I call on these witnesses looking over to hear what I say to you;" to which said Watkins replied, "Put him aboard, put him aboard," referring to libellant and his protestations, and the resistance he was then making to being forced on board the said steamer Golden Age; that said persons in said row-boat being a portion of said kidnappers, and acting in concert with and by said order of said Watkins, forced libellant up a suspended ladder attached to the side of said steamer, up to and upon her deck.

173 Ninth. That said Watson, then and there aiding and assisting the said kidnappers on board of said steamer Hercules and in the row-boat aforesaid, and being first officer of said steamer Golden Age, acting under the command and direction of said Watkins, commander, and combining and confederating with said Watkins and said persons in said row-boat, stood ready on the deck of said steamer, at the top of said ladder, to assist in forcing libellant on the deck, did so assist, and was aided by other persons, employees of said steamer, and under the direction and command of said Watkins and Watson in so forcing libellant on board; that as soon as libellant had reached the deck of said steamer he was seized by said Watson, who violently shoved libellant in the direction of the steerage, saying to libellant, "Go forward where you belong."

Tenth. That at the time libellant was so forced upon said steamer Golden Age he was sick, and without a change of clothes, and without a shirt save that he was wearing, without bed or bedding, without money or

174 friends present with him, that he knew of, and was suffering the most excruciating mental and bodily agony.

Eleventh. That libellant while being driven forward on said steamer was met by one or two persons who offered to alleviate his sufferings by taking him in the cabin of said steamer, but the said Watkins refused to permit libellant to go to or remain in said cabin, and said that the steerage was the place designated for libellant, and there he must go; that libellant not wishing to bring others into trouble, and in obedience to the commands of said Watkins conveyed to him through the purser of said steamer, went to the forward steerage designated, and a portion of the time was compelled to sleep on the deck covering said steerage and in the open air, no bed or berths being pointed out to him fit to repose in; that some persons purchased of the steward of said steamer food for libellant, and he was thus in a measure relieved of his distress.

175 Twelfth. That after being on the voyage some three or four days, the said Watkins, master, sent for libellant, who on calling at the office of said Watkins was interrogated by him as to whether it was libellant's intention to go ashore at Acapulco, a Mexican port in the Pacific Ocean, which port they were approaching; that said Watkins then and there told libellant that he could not go ashore at said port, that he, Watkins, had a guard especially formed to prevent libellant, as well one Wm. Mulligan and one Kearney, (who were on board kidnapped in the same manner as libellant,) from going on shore at said place; that his, Watkins's, orders were to land all three of them at the port of Panama, a port in the republic of New Grenada, some three thousand miles distant from said State of California.

Thirteenth. That on the evening of the twelfth or thirteenth of June, 1856, said steamer arrived at said port of Acapulco; that during said voyage libellant was in a great state of mental and bodily suffering in conse-

176 quence of the aforesaid cruel wrongs inflicted on him, and was pointed at and avoided by the passengers and persons on board as if he were a felon and unfit to mix or associate with respectable people, and was otherwise treated in a cruel, unmerciful, and inhuman manner by said Watkins and Watson as aforesaid.

Fourteenth. That said Watkins and Watson, intending and contriving to kidnap and abduct libellant and carry him out of the State of California, and well knowing that they were engaged in an unlawful and illegal attempt and conspiracy in the premises, procured or caused to be procured, as libellant is informed and believes, and therefore alleges, a bond or bonds or other obligation indemnifying and saving them, with others to libellant unknown, harmless of and from any and all damages and liability to be incurred on their part, in abducting and carrying libellant and others out of said
177 State of California, which bond or bonds or obligation was furnished by the orders, and abettors, and co-conspirators, or some of them, of said Watkins and Watson and for the purposes aforesaid.

Fifteenth. That said persons, the aiders and abettors as aforesaid, were a band of persons, mostly American citizens residing in the State of California, organized and armed in open rebellion to the laws and constitution of the State of California and the United States, and were known as the vigilance committee of the city of San Francisco, and who aided and abetted said Watkins and Watson in the aforesaid illegal and malicious abduction and kidnapping of appellant on the high seas as aforesaid, and a portion of which *which* vigilance committee were the persons on board of said steamer Hercules, on said 5th day of June aforesaid, co-operating and conspiring with said Watkins and Watson.

Sixteenth. That libellant is informed and believes that said Watkins
178 and Watson were members of said vigilance committee, and here expressly charges and alleges that they and each of them colluded, connived, aided, and assisted the persons aforesaid, on board of said steamer Hercules, at the time and in the manner aforesaid, and that said Watkins, master, and said Watson, 1st officer of said steamer Golden Age, in inflicting and perpetrating the aforesaid wrongs, injuries, and grievances upon libellant, used, controlled, and managed said steamship Golden Age as a necessary means and instrument for the purpose of accomplishing and carrying out their nefarious design of abducting and exiling libellant from his country, and despoiling him of his good name and reputation and of his property; and the more effectually to accomplish their wicked and malicious plans they selected the high seas as aforesaid for such purpose.

179 Seventeenth. That on the evening of the day of arrival at said Acapulco all persons who desired were permitted to leave said steamer, but libellant was prevented from so doing by a guard of men placed at the gangway by directions of said Watkins and Watson, and was repeatedly resisted by said guard, acting under orders of said Watkins and Watson, in his attempts to leave said steamer and go to the shore.

Eighteenth. That libellant finally and under cover of night, by stealth and in disguise, and to escape the imprisonment and cruel treatment inflicted upon him on board said steamer, and to prevent the continuation of such imprisonment, and outrage, and deportation of said libellant from his home so threatened as aforesaid, succeeded in passing the said guard and escaped to the shore, where he concealed himself until the departure of said
180 steamer Golden Age.

Nineteenth. That libellant then being in a strange country without friends or money, and with a determination to return to California, applied to the agent of the Pacific Mail Steamship Company who resided at said port of Acapulco, and which company were the owners of said steamer Golden Age, and the employees of said Watkins and Watson for assistance in so returning, stating the circumstances of libellant's abduction and poverty; but said agent utterly refused to afford libellant any aid, although one of said company's steamers was then about to touch at said port on her voyage to San Francisco, saying he would not allow libellant a passage back to California

for either love or money, which refusal and statement so made by said
181 agent was caused and instigated by said Watkins and Watson or one of them, as libellant believes and alleges.

Twentieth. That there being no other way or opportunity afforded libellant of returning to California, he went on board of the steamer John L. Stephens, a vessel also belonging to said company, bound for San Francisco aforesaid, being the first vessel which had touched at said port, but when about three days out libellant was informed that he could not remain on board of that vessel; that the news of his banishment and exile from California had been then discovered, and he would be placed on board of a steamer which was then expected to be spoken in her voyage from San Francisco to Panama, which was the steamer Sonora, also owned by said Pacific Mail Steamship Company, that very shortly afterwards the said steamer Sonora
182 was spoken for the purpose aforesaid, and notwithstanding the protestations and resistance of libellant, he was forcibly and against his will thrust out of said steamer John L Stephens upon said steamer Sonora, and in like manner and against his will carried to Panama aforesaid.

Twenty-first. That upon arriving at Panama aforesaid libellant was without money or friends, and being still determined to return to California, went to the agent of said company residing at Panama, to endeavor to secure a passage back to California, but was refused by said agent. Libellant also, after stating to the American consul at Panama his condition and circumstances, procured said consul's interference with said agent for such purpose, and also procured the assistance of a friend at said place, who offered
183 to pay the passage of libellant to California to said agent; but all of said attempts were unavailing. Libellant then went in an English steamer to Greytown, a harbor or port in the republic of Nicaragua, for the purpose of effecting a return to California, by a line of steamers then running from San Juan del Sed, in said republic, to San Francisco; that on arriving there the steamer of that line had departed some two or three days previously for San Francisco, and the line discontinued. Libellant then returned to Aspinwall, in said New Grenada, and finding no means or opportunity of securing a passage back to California, and being in a destitute condition, made use of a letter, kindly furnished him by R. L. Whiting, esq., commander of said steamer Sonora, and through the charity of an agent of the line of steamers
184 from Aspinwall to New York City, obtained a passage to that place.

Twenty-second. That libellant arrived at said port of New York, State of New York, in the month of September, 1856, in the same destitute condition, his character blasted, and his reputation gone, dependant upon the charity of his friends and unable to make his livelihood, and enfeebled and prostrated in mind and body; that in consequence thereof he was unable to make a living, or compensate, or accumulate sufficient means or money to return to California, until about the month of February, A. D. 1860, when he arrived in said State of California.

Twenty-third. That when libellant was so abducted from the State
185 of California he was threatened by said vigilance committee with the penalty of death should he ever return to the State of California; that libellant had been informed and knows to be true, that said committee had from time to time caused to be executed without warrant of law a number of persons, and that they, said committee, possessed the power and had the ability to carry out their threats; that he had reason to believe and did believe from the means which had been employed to carry him out of said State, and to prevent his return thereto by said Watkins and Watson, and others his return, even had libellant the means or ability to do so, would be impeded and resisted, and in case of success his life put in peril and jeopardy; that libellant during a great portion of the time he so remained out of

186 said State was in feeble health, and required the advice and assistance of physicians, and remained in a hospital for the sick in said New York several months preceding his departure from said city.

Twenty-fourth. That by reason of the wrongs, indignities, outrages, torts, and spoliations committed as aforesaid upon libellant by the said J. T. Watkins and J. S. Watson, as aforesaid, upon the high s. as aforesaid, this libellant has sustained great damages, which he is entitled to recover of them, and that said damages are to the amount and value of fifty thousand dollars, ($50,000,) which amount libellant claims to recover of and from said J. T. Watkins and said J. S. Watson in this suit.

Twenty-fifth. That all and singular the premises are true and within
187 the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore libellant prays that process, in due form of law, and a warrant of arrest, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said J. T. Watkins and J. S. Watson, and that they and each of them may be required to appear and answer on oath this libel and the interrogatories annexed and all and singular the matters aforesaid, and that if they cannot be found, that their goods and chattels, and if none be found, that their credits and effects may be attached to the amount sued for and costs, and that this honorable court would be pleased to decree the payment of the damages sustained by
188 the libellant with costs, and that he may have such other and further relief as in law and justice he may be entitled to receive.

C. P. DUANE.

CHAS. D. JUDAH, *Proctor for Libellant.*
JNO. NUGENT, *Advocate.*

Sworn to before me this 24th day of July, 1860.

W. H. CHEVERS, *U. S. Com.*

189 Interrogatories propounded by Charles P. Duane, libellant, to J. T. Watkins, respondent, in a cause, civil and maritime, for personal spoliation and damage, in the district court of the United States for the northern district of California.

First interrogatory. Were you, on the fifth day of June, A. D. 1856, master or commander of the steamship Golden Age?

190 Second interrogatory. Did you, on said 5th day of June, 1856, as commander or master of said steamship Golden Age, proceed in her out of the bay of San Francisco to the high seas, and when off and near the heads of the entrance to this port cause said steamer to be stopped? If yea, did you not cause said steamer to deviate from what would have been her proper course and direction bound to Panama, in reaching the place where such stoppage occurred?

Third interrogatory. Was not such deviation or stoppage made in pursuance of a previous agreement or understanding, and with a knowledge on your part that said steamer Golden Age was, in going out of this port on said day, to meet a tug-boat or small steamer off or near the entrance
191 of the port, and that on meeting said tug or small steamer the said steamer Golden Age would stop?

Fourth interrogatory. Did you, as such master or commander of said steamship Golden Age, cause her to be stopped near a tug-boat or small steamer in your going out of the port of San Francisco on said day? If yea, how long did said steamer Golden Age remain at the place of meeting said tug boat after your stoppage and up to the time of your resuming the voyage to Panama?

Fifth interrogatory. Were you not informed, and did you not then know, that the object of such stoppage of said steamer Golden Age and
192 meeting with said tug-boat or small steamer was to effect a transfer of certain persons, or some persons, who were on board said tug-boat or small steamer to the steamer under your command, and were you not informed and did you not then know that the libellant was one of them persons?

Sixth interrogatory. Did you not cause said steamer Golden Age to lay by and await the transfer of the libellant and others from said tug-boat or small steamer to the steamer under your command?

Seventh interrogatory. Did you know the libellant, Charles P. Duane? If yea, did you not, on the 5th day of June, 1856, see him in a row-boat,
193 brought or conveyed from said tug-boat or small steamer towards the steamer under your command? Were you not on the wheel-house of said steamer Golden Age when said row-boat was approaching you?

Eighth interrogatory. Did you not, on said 5th day of June, 1856, while said row-boat was approaching your steamer, hear said libellant call upon or address you? If yea, what did he say to you? Did you not, after said libellant had so addressed you, say or reply "Put him aboard," or words to that effect, referring to said libellant?

Ninth interrogatory. Do you not know, and did you not know, on said day and on said occasion, that said libellant was forced on board of said
194 steamer Golden Age against his will, and did he not resist being put on board of said steamer Golden Age?

Tenth interrogatory. After libellant was put on board said steamer Golden Age, did you not immediately proceed on your voyage to Panama with him on board? Did you receive, or did you give to any person, any directions or orders as to the treatment and disposition of libellant on board said steamer? If yea, state fully and from whom you received such orders or directions, or to whom you gave any such, and what such orders or directions were in substance.

Eleventh interrogatory. After the sailing of said steamer Golden Age, and before her arrival at the port of Acapulco, did you give any orders or
195 directions to the effect that libellant would not be permitted to resist or remain in the cabin of said steamer? and while on said voyage to Acapulco did you send for libellant, and in a conversation with him, state that you had a guard to prevent him and others on board from leaving said steamer at Acapulco; further, that said libellant should not leave said steamer until her arrival at Panama?

Twelfth interrogatory. Did you, after the arrival of said steamer at Acapulco, cause a guard to prevent, or otherwise order any persons to prevent, the libellant from leaving said steamer?

196 Thirteenth interrogatory. Did you, while in the said port of Acapulco, see the agent of the Pacific Mail Steamship Company who resided at said Acapulco? If yea, did you acquaint him with the fact that libellant had been brought to that port on the said steamer Golden Age? and did you acquaint him with the general circumstances of libellant's banishment from the State of California? Did you *you* advise or give said agent any directions about said libellant in case he should apply for passage back to California? If yea, what was the substance of such advice or directions?

Fourteenth interrogatory. Were you a member, active or otherwise, of the vigilance committee of San Francisco at any time in the month of June, 1856?

197 Fifteenth interrogatory. Were you, on the 5th day of June, 1856, or at any time before or afterwards, informed, or did you know, that a bond or bonds, or other obligation, had been executed or furnished to the

agents of the Pacific Mail Steamship Company residing at San Francisco, or other persons, the purport of which was saving and holding you, or you with others, harmless of and from all liability or damage, or otherwise protecting you in taking or conveying away libellant, or libellant with others, from the State of California?

CHAS. D. JUDAH, *Proctor for Lib'l't.*

198 Interrogatories propounded by Charles P. Duane, libellant, to J. S. Watson, respondent, in a cause, civil and maritime, for personal spoliation and damage, in the district court of the United States for the northern district of California.

First interrogatory. Were you 1st officer, or chief mate, of the steamship Golden Age on the 5th day of June, 1856?

199 Second interrogatory. Did you, as 1st officer aforesaid, leave the port of San Francisco in said steamer on the 5th June, 1856?

Third interrogatory. Do you know the libellant? If yea, did you see him at any time on said 5th day of June, 1856? If yea, where and what time of day and where?

Fourth interrogatory. Did you not know, or were you not informed, that said steamer Golden Age was, in going out of the port of San Francisco on said 5th day of June, 1856, to stop and take on board certain persons, or some persons, among whom was libellant?

Fifth interrogatory. Did not said steamer Golden Age so stop in going
200 out of said port, and did you not see libellant and others, in a row-boat, approach said steamer while she was so stopped? If yea, did you hear libellant address the master or commander of said steamer? and did not libellant refuse and resist being put on said steamer Golden Age? State also what libellant said to the master or commander of the Golden Age at said time.

Sixth interrogatory. Did you not stand at a gangway of said steamer Golden Age on said 5th June, 1856, as said row-boat was approaching her with libellant in, and did you not aid and assist in getting said libellant up the ladder and gangway and upon said steamer? Did you not know at the time libellant came on board that he was being forced on board and
201 that it was against his will or consent, and that the libellant then and there resisted being put on board said steamer?

Seventh interrogatory. After the arrival of said steamer Golden Age at the port of Acapulco, did you not aid or assist, or give directions or orders regarding libellant and his leaving said steamer at that port? If yea, state what you did, or what orders or directions you gave, and what was done on board said steamer to prevent said libellant, or the libellant with others, from going on shore or leaving said steamer.

202 Eighth interrogatory. Were you at any time in the month of June, 1856, a member, active or otherwise, of the vigilance committee of San Francisco?

CHAS. P. JUDAH, *Proctor for Lib.*

On filing the foregoing libel and stipulation for the indemnity of the defendants, J. T. Watkins and J. S. Watson, in the sum of five hundred dollars, and otherwise complyingwith the rules of the court, let a warrant of arrest issue in this cause against said defendants, J. T. Watkins and J. S. Watson, and let the said J. T. Watkins be held to bail in the sum of ten thousand dollars, and the said J. S. Watson to be held to bail in the sum of two thousand dollars.

OGDEN HOFFMAN, *Dist. Judge.*

San Francisco, Aug. 13, 1860.

203 [SEAL.] The President of the United States of America to the marshal of the northern district of California, greeting:

Whereas a libel has been filed in the district court of the United States of America for the northern district of California, on the 24th day of July, in the year of our Lord one thousand eight hundred and sixty, by Charles P. Duane against J. T. Watkins, in a certain action civil maritime, for moneys therein alleged to be due and owing to the said libellant, amounting to fifty thousand dollars, and praying that a warrant of arrest issue against
204 the said respondent, and that he may be held to bail pursuant to the rules and practice of this court: Now, therefore, we do hereby empower and strictly charge and command you, the said marshal, that you take and arrest the said respondent, if he shall be found in your district, and him safely keep, so that you may have his body before the said district court on the 28th day of August inst., at the court-room in the city of San Francisco, then and there to answer the said libel, and to make his allegations in that behalf. And have you then and there this writ, with your return thereon.

Witness the Honorable Ogden Hoffman, judge of said court, this 24th day of August, in the year of our independence the 85th.

W. H. CHEVERS, *Clerk.*

C. D. JUDAH, *Proctor.*

205 Endorsed: United States district court. C. P. Duane *vs.* J. T. Watkins. Warrant of arrest. Returnable 28th Aug., 1860. C. D. Judah, proctor for lib.

Filed Aug. 28, 1860

W. H. CHEVERS, *Clerk.*

The marshal will hold the respondent to bail in the sum of ten thousand dollars. Dated Aug. 24, 1860.

W. H. CHEVERS, *Clerk.*

U. S. MARSHAL'S OFFICE, *Nor. Dist. of California.*

In obedience to the within warrant, I have arrested the said J. S.
206 Watkins, and have held him to bail in the sum of ten thousand dollars, as commanded herein; which bail bond I have returned to the clerk of the court.

San Francisco, Aug. 25, 1861.

P. L. SOLOMAN, *U. S. Marshal,*
By JOHN H. WILLIAMS, *Deputy.*

[SEAL.] The President of the United States of America to the marshal of the United States of America:

Whereas a libel has been filed in the district court of the United
207 States of America for the northern district of California, on the 24th day of July, in the year of our Lord one thousand eight hundred and sixty, by Charles P. Duane against said J. S. Watson, in a certain action civil maritime, for moneys therein alleged to be due and owing to the said libellant, amounting to fifty thousand dollars, and praying that a warrant of arrest may issue against the said respondent, and that he may be held to bail pursuant to the rules and practice of this court: Now, therefore, we do hereby empower, and strictly charge and command you, the said marshal, that you take and arrest the said respondent, if he shall be found in your district, and him safely keep, so that you may have his body before the said district court on the 28th day of August inst., at the court-room, in the city of San
208 Francisco, then and there to answer the said libel, and to make his allegations in that behalf. And have you then and this writ with your return thereon.

Witness the Honorable Ogden Hoffman, judge of said court, this 24th day of August, in the year of our Lord one thousand eight hundred and sixty, and of our independence the 85th.

W. H. CHEVERS, *Clerk.*

C. D. JUDAH, *Proctor.*

Endorsed: United States district court. C. P. Duane *vs.* J. S. Watson. Warrant of arrest. Returnable Aug. 28th, 1860. C. D. Judah, proctor for lib.

Filed Aug. 28, 1860.

W. H. CHEVERS, *Clerk.*

209 The marshal will hold the respondent to bail in the sum of two thousand dollars. Dated Aug. 24, 1860.

W. H. CHEVERS, *Clerk.*

U. S. MARSHAL'S OFFICE, *Nor. Dist. of Cal.*

In obedience to the within warrant, I have arrested the said J. S. Watson, and have held him to bail in the sum of two thousand dollars, as commanded herein; which bail bond I have returned to the clerk of the court.

San Francisco, Aug. 25, 1860.

P. S. SOLAMON, *U. S. Marshal,*
By JNO. H. WILLIAMS, *Deputy.*

210 At a stated term of the district court of California, held at the court-house, in the city of San Francisco, on Tuesday, the 28th day of August, in the year of our Lord one thousand eight hundred and sixty.

Present: The Honorable Ogden Hoffman, district judge. Charles P. Duane *vs.* J. T. Watkins, and J. S. Watson.

The marshal having returned on the warrants issued in this case that he had arrested the said defendants, and held them to bail in the
211 amounts endorsed thereon, on motion of Mr. Judah, proctor for libellant, proclamation was made for the said defendants to appear and answer the libel herein. Mr. McAllister appeared for the said defendants, and on his motion it was ordered by the court that he be allowed twenty days to except to or answer the libel of the said libellant.

Endorsed: District court of the United States, in and for the northern district of California. Charles P. Duane *vs.* J. T. Watkins and J. S. Watson. Order on return of warrants of arrest.

Filed Aug. 28, 1860.

W. H. CHEVERS, *Clerk.*

212 In the district court of the United States in and for the northern district of California, in admiralty.

CHARLES P. DUANE, libellant,
against
JAMES T. WATKINS AND J. SLAUGHTON WATSON, defendants.

To the Honorable Ogden Hoffman, judge of the United States district court for the northern district of California:

The exceptions of James T. Watkins and J. Slaughton Watson, defendants, to the liable of Charles P. Duane, libellant, allege as follows:

213 *First exception.*—That this honorable court has no jurisdiction of the matters contained in the said libel, the same not being matters of admiralty and maritime jurisdiction.

Second exception.—That this honorable court has no jurisdiction by a proceeding in personam of the matters contained in the said libel, the same not being matters of admiralty and maritime jurisdiction by a libel in personam.

Third exception.—That the matters contained in said libel were insufficient to authorize the arrest of these defendants or either of them.

Fourth exception.—That the whole of the third article of said libel is irrelevant, immaterial, impertinent, and ought to be expunged.

214 *Fifth exception.*—That the whole of the seventh article of said libel is irrelevant, immaterial, impertinent, and ought to be expunged.

Sixth exception.—That the whole of the ninth article of said libel is irrelevant, immaterial, impertinent, and ought to be expunged.

Seventh exception.—That the whole of the thirteenth article of said libel save so much thereof as is as follows, "and was otherwise treated in a cruel, unmerciful, and inhuman manner by said Watkins and Watson as aforesaid," is irrelevant, immaterial, impertinent, and ought to be expunged.

Eighth exception.—That the whole of the fourteenth article of said libel is irrelevant, immaterial, impertinent, and ought to be expunged.

Ninth exception.—That the whole of the fifteenth article of said libel is irrelevant, immaterial, impertinent, and ought to be expunged.

215 *Tenth exception.*—That the whole of the nineteenth article of said libel is irrelevant, immaterial, impertinent, and ought to be expunged.

Eleventh exception.—That the whole of the twentieth article of said libel is irrelevant, immaterial, impertinent, and ought to be expunged.

Twelfth exception.—That the whole of the twenty-first article of said libel is irrelevant, immaterial, impertinent, and ought to be expunged.

Thirteenth exception.—That the whole of the twenty-second article of said libel is irrelevant, immaterial, impertinent, and ought to be expunged.

Fourteenth exception.—That the whole of the twenty-third article of said libel is irrelevant, immaterial, impertinent, and ought to be expunged.

Fifteenth exception.—And as a peremptory exception in bar of libel-

216 lant's said libel, these defendants say that it appears upon the face of said libel that if the said libellant, Charles P. Duane, ever had any cause of action or libel against these defendants, or against either, for or concerning any of the matters in the said libel mentioned, (which these defendants do in no sort admit,) such cause of action or libel did accrue or arise above four years before serving or suing out process against these defendants, or against either of them, to appear to and answer said libel, and above four years before serving or suing out a warrant of arrest against these defendants, or against either of them; and above four years before serving or suing out an attachment against the goods and chattels or credits and effects of these defendants, or either of them; and the said Charles P. Duane, libellant as aforesaid, was not at any time within upwards of four years before the filing of said libel or within upwards of four years before the

217 serving or suing out process againt these defendants, or against either of them to appear to and answer said libel, or within upwards of four years before the serving or suing out a warrant of arrest against these defendants, or against either of them, or within upwards of four years before the serving or sueing out an attachment against the goods and chattels, or credits and effects of these defendants, or either of them, under any disability to sue or file a suit against these defendants, or either of them. That for upwards of four years before the filing of libellant's said libel these defendants were, and each of them was, resident within the State of California, and within the aforesaid northern district thereof. That if said libellant, Charles P. Duane, ever had any cause of action or libel against these defendants, or against either of them, for or concerning any of the matters in the

said libel mentioned, (which these defendants in no sort admit,) such cause of action *of action* or libel was at the time of the filing of libellant's said libel and now is too stale a demand to be entertained by this honor-
218 able court, and that this appears upon the face of said libel. That by said libel it appears that each and all the alleged causes of action or of libel therein set forth against these defendants, or against either of them, accrued during the month of June, 1856; and that said libel was filed on the twenty-fourth day of July, 1860; that on the twenty-second day of April, 1850, a certain statute of the State of California, entitled "An act for defining the time for commencing civil actions," was made and passed, which said statute has ever since been and still is in full force; that on the first day of May, 1861, a certain other statute of the State of California, entitled "An act to regulate proceedings in criminal cases," was made and passed, and that sections 96, 97, 98, 99, and 100 of said last-mentioned statute, which relate to the time within which criminal actions may be commenced, have ever since been and still are in full force; that the rule of limitation by which this action ought to be controlled should be in accordance with the limitations established by said statutes, and that if these be adopted or if either of them be adopted as the law of this case, then this ac-
219 tion cannot be maintained, by reason of the great lapse of time which has intervened between the accruing of the alleged causes of action set forth in said libel and the filing of the same.

J. J. WATKINS.
J. S. WATSON.

HALL MCALLISTER, *Proctor for Defendants.*

Sixteenth exception.—That all those portions of said libel which relate to or which seek to make out a cause of action against said J. Stoughton Watson, are irrelevant, immaterial, impertinent, and ought to be expunged; for that it appears upon the face of said libel that at the times therein referred to said J. Stoughton Watson was first mate of the steamship Golden Age, a mere subordinate, bound to carry out and (if the matters set forth in said libel be true) engaged in carrying out the orders of his superiors as to each and all the matters alleged in said libel, and therefore destitute of all
220 power and free from all responsibility in the premises. And defendants pray that all of foregoing exceptions may be allowed.

HALL MCALLISTER, *Proctor for Defendants.*

Endorsed: It is hereby consented and agreed that the foregoing exceptions of defendants to the libel in the cause therein mentioned be filed in said cause this 11th day of October, 1860.

C. P. JUDAH, *Proctor for Lib.*

In the district court of the United States for the northern district of California, in admiralty. Charles P. Duane, libellant *ag'st* James T. Watkins and J. Stoughton Watkins. Exceptions of defendants to libel.
Filed Oct. 11, 1860.

W. H. CHEVERS, *Clerk.*

221 District court of the United States in and for the northern district of California, in admiralty.

CHARLES P. DUANE, libellant,
vs.
JAMES T. WATKINS AND J. S. WATSON, defendants.

SIR: You will please take notice that the defendants in the above-entitled cause have this day filed exceptions to the libel therein with the clerk of the

court above named, and that the same will be brought on for argument on Tuesday, the 23d day of October instant, before said court, at the opening thereof on that day, or as soon thereafter as counsel can be heard, according to the rules and practice of said court.

Dated San Francisco, Oct. 11, A. D. 1860.

HALL McALLISTER, *Proctor for Defendants.*

To CHARLES P. JUDAH, *Proctor for Libellant.*

Endorsed: Due service upon me, in San Francisco, of a notice of
222 which the within is a copy is hereby admitted in the cause therein mentioned, notice of motion of similar nature having been given to proctor for respondent for said day.

C. P. JUDAH, *Proctor for Libellant.*

United States district court, in admiralty. Charles P. Duane *v.* James T. Watkins *et al.* Copy notice of filing exceptions, and argument, and admission of service.

Filed Oct. 23d, 1860.

W. H. CHEVERS, *Clerk.*

223 In the district court of the United States in and for the northern district of California.

CHARLES P. DUANE, libellant,
vs.
JAMES F. WATKINS AND J. S. WATSON, defendants.

The separate answer of James T. Watkins, of San Francisco, California, to the libel of Charles P. Duane, answers and alleges as follows:

First. That this defendant by interposing this answer does not intend to waive the exceptions to the libel of Charles P. Duane, heretofore filed in this action, but insists that each and all of said exceptions are well taken and should be adjudged good and valid.

Second. That if the said libellant, Charles P. Duane, ever had any cause of action or libel against the defendant for or concerning any of the matters in the said libel mentioned, (which this defendant does in no sort admit,) such cause of action or libel did accrue or arise above four years before
224 the filing of the libellant's said libel, and above four years before serving or suing out process against this defendant to appear to and answer said libel, and above four years before serving or suing out a warrant of arrest against this defendant, and above four years before serving or suing out an attachment against the goods and chattels or credits and effects of this defendant; and the said Charles P. Duane, libellant as aforesaid, was not at any time within upwards of four years before the filing of his said libel, or within upwards of four years before the serving or suing out process against this defendant to appear to and answer the said libel, or within upwards of four years before the serving or suing out a warrant of arrest against this defendant, or within upwards of four years before the serving or suing out an attachment against the goods and chattels or credit and effects of this defendant, under any disability to sue or file a libel against this
225 defendant. That for upwards of four years before the filing of libellant's said libel this defendant was resident within the State of California and within the aforesaid northern district thereof. That if said libellant, Charles P. Duane, ever had any cause of action or libel against this defendant for or concerning any of the matters in the said libel mentioned, (which this defendant does in no sort admit,) such cause of action was at the time of the filing of libellant's said libel and now is too stale a demand to be entertained by this honorable court. That by said libel it appears that each and all the alleged

causes of action or of libel therein set forth accrued during the month of June, A. D. 1856, and that said libel was filed on the twenty-fourth day of July, A. D. 1860. That on the twenty-second day of April, 1850, a certain statute of the State of California, entitled "An act defining the time for commencing civil actions," was made and passed, which said statute has ever since been and still is in full force. That on the first day of May,
226 1851, a certain other statute of the State of California, entitled "An act to regulate proceedings in criminal cases," was made and passed, and that sections 96, 97, 98, 99, and 100 of said last-mentioned statute, which relate to the time within which criminal actions may be commenced, have ever since been and still are in full force. That the rule of limitations by which this action ought to be controlled should be in accordance with the limitations established by said statutes, and that if these be adopted, or if either of them be adopted, as the law of this case, then this action cannot be maintained, by reason of the great lapse of time which has intervened between the accruing of the alleged causes of action set forth in said libel and the filing of the same.

Third. This defendant admits the truth of the matters set forth in the first article of said libel, except that this defendant denies that on or about the fifth day of June, A. D. 1856, libellant was, or for several years previous thereto had been, a man of good character or good reputation, or well
227 known as such in the community where he had lived or was engaged in prosecuting any business.

Fourth. That this defendant is ignorant of the matters set forth in the second article of said libel, and therefore denies the same, and holds the libellant to strict proof thereof.

Fifth. That this defendant is ignorant of the matters set forth in the third article of said libel, and therefore denies the same, and holds the libellant to strict proof thereof.

Sixth. That this defendant is ignorant of the matters set forth in the fourth article of said libel, and therefore denies the same, and holds the libellant to strict proof thereof.

Seventh. That this defendant denies each and all the allegations contained in the fifth article of said libel.

Eighth. This defendant admits the truth of the matters contained in the sixth article of said libel, except that this defendant denies that any
228 of the acts or doings alleged against him in said sixth article were done or performed in pursuance of the combination or confederation, or intention or design, charged against him in said libel, and denies that he, the defendant, caused said steamer Golden Age to deviate from her usual course, and denies that said steamer was stopped or kept in waiting for the accomplishment or carrying out of any malicious or wicked design on the part of, or participated in by, this libellant. This defendant avers that at the time referred to in said sixth article he was master of the steamship Golden Age, and previous to his departure from the city of San Francisco had received orders from the Pacific Mail Steamship Company, the owners of said steamship Golden Age, by and through their agents to stop in or near the entrance of the port off San Francisco, and receive such persons from the steam-tug Hercules as should come or be sent therefrom on board the Golden Age; that defendant had heard that these persons so exported from said steam-tug Hercules were vigilance committee exiles who were ban-
229 ished by said vigilance committee under penalty of death in case of their refusal to depart from said State of California, or in case of their returning thereto while the vigilance committee sentence of banishment continued in force against them; that by this time said vigilance committee had already hung several persons and had and exercised supreme control within

the city of San Francisco, and great feeling and excitement existed in said city against libellant, and he had been some time under arrest and held in imprisonment by said vigilance committee; that under these circumstances and acting under the orders of said Pacific Mail Steamship Company as aforesaid, in whose employ and under whose control he, defendant, and said steamship was, and believing that libellant's life would be in imminent peril should he remain in San Francisco, and actuated by humane motives, this defendant did receive on board said steamship Golden Age, at the time referred to, from said tug Hercules three vigilance committee exiles, and among
230 them this libellant, and that for each and all of said three exiles the purser of said steamship received passage tickets for the voyage to Panama, entitling each of them to a steerage passage on board said Golden Age, and issued by the agent of said Pacific Mail Steamship Company, at San Francisco; that said steamship Golden Age waited by said steam-tug Hercules for five or ten minutes to receive the persons so expected from her; that while said Golden Age was so waiting there came from said Hercules a small boat belonging thereto containing, among other persons, this libellant; that at this time libellant was not handcuffed or pinioned or in any way restrained of the proper use of his body or limbs; that upon said small boat's reaching said Golden Age libellant came on board without any force or visible compulsion being used towards him and without any protest on his part; that defendant regarded libellant not as a voluntary exile but as one who desired to leave San Francisco in preference to hazarding the penalties generally understood to be threatened by said vigilance
231 committee against those who refused to submit to the edict of banishment; that defendant had no—not the slightest—personal animosity against libellant; on the contrary, was disposed to be considerate and kind towards him; that although libellant had only a steerage passage ticket this defendant allowed him and one William Mulligan, another of said exiles, to occupy a first-cabin state-room together, and to have first-cabin fare served to them in said state-room during the period they remained on board said Golden Age at the time herein referred to ; that while libellant remained on board said Golden Age, and on the voyage between San Francisco and Acapulco, at the time referred to in said libel, he was in want of various articles of underclothing; that upon defendant's ascertaining such want he supplied libellant from his, defendant's, own wardrobe with such articles as he, libellant, needed; that during all the time libellant remained on board said Golden Age, at the time referred to in said libel, he was treated by this defendant and by the officers of said Golden Age with great and uniform kind-
232 ness.

Ninth. That this defendant denies each and all the allegations contained in the seventh article of said libel, except in so far as the same are hereinbefore expressly admitted.

Tenth. That this defendant denies each and all the allegations contained in the eighth article of said libel, except in so far as the same are hereinbefore expressly admitted, and except that this defendant admits that at the time referred to he was on the wheel-house of said Golden Age, and that libellant said something, but what it was this defendant did not and could not hear by reason of the distance between libellant and defendant, and by reason of the existing noise and confusion.

Eleventh. That the defendant is ignorant of the matters set forth in the ninth article of said libel, and therefore denies the same, and holds libellant to strict proof thereof, except that defendant admits that J. S. Wat-
233 son was first officer of said Golden Age, and was, so far as regarded his general conduct on board said steamer, acting under the direction and command of this defendant.

Twelfth. That defendant is ignorant of the matters set forth in the tenth article of said libel, and therefore denies the same, and holds the libellant to strict proof thereof, except that defendant denies the sickness of libellant, and denies the bodily agony of libellant therein alleged.

Thirteenth. That defendant denies each and all the allegations contained in the eleventh article of said libel.

Fourteenth. That defendant admits the truth of the matters set forth in the twelfth article of said libel, except that the interview between libellant and this defendant therein referred to was one sought by libellant himself for the purposes of counsel and advice; that it was a friendly interview; that defendant fully believing that should libellant return to San Francisco while the vigilance committee sentence of banishment existed against
234 him he would certainly be hung, advised him to proceed to New York, where he had formerly resided, and not to attempt to return to San Francisco; that defendant has no recollection of saying anything about a guard to prevent libellant from going on shore at Acapulco, and therefore denies the same.

Fifteenth. That defendant denies each all and singular the allegations contained in the thirteenth article of said libel, except that this defendant admits that said steamship Golden Age arrived at the port of Acapulco on the thirteenth day of June, A. D. 1856.

Sixteenth. That defendant denies each all and singular the allegations contained in the thirteenth article of said libel; that this defendant has not received any bond or instrument of indemnity, or any promise of indemnity, from any person or persons whomsoever in any way connected with or relating to the matters set forth in said libel, or any of them.

235 Seventeenth. That this defendant admits upon information and belief the truth of the matters set forth in the fifteenth article of said libel, except that this denies that he was guilty of any illegal or malicious abduction or kidnapping of libellant, and denies any co-operation or conspiracy on his part with said vigilance committee.

Eighteenth. That as to the matters set forth in the seventh article of said libel this defendant admits as follows: That on one occasion previous to the transactions alleged in said libel he casually entered the rooms of the vigilance committee with a friend, and from mere motives of curiosity; that while examining said rooms he was asked by an acquaintance to sign the roll of the members of said vigilance committee, and he thereupon did so; not with any intention of participating in the acts of said vigilance committee, but for the purpose of indicating his approval of the general course of said vigilance committee up to that time; that this defendant never
236 entered the rooms of said vigilance committee except on the occasion hereinbefore mentioned; that he was never an active member of said vigilance committee; that he never took any part in their deliberations, acts, or proceedings, never joined their drills, never marched with them or any of them, and especially that he never consulted or acted with them as to the banishment or sending away of libellant, set forth in the libel herein. And as to each and all the other matters set forth in the sixteenth article of said libel this defendant denies the same, except so far as the same have been hereinbefore expressly admitted.

Nineteenth. That as to the matters set forth in the seventeenth article of said libel this defendant says he admits that he gave orders not to allow the libellant to go on shore at Acapulco; but he denies that libellant openly attempted to leave said steamer Golden Age, or that he was resisted by a guard or by any one in such attempt; on the contrary, this defendant avers
337 that libellant apparently acquiesced in said orders, and professed and declared to this defendant that he had no intention of leaving said

steamer at Acapulco, but had concluded it was best for him, libellant, to go on to New York.

Twentieth. That as to matters set for in the eighteenth article of said libel, this defendant admits that libellant under cover of night and by stealth left said Golden Age, but he denies the charge of imprisonment or cruel treatment, or outrage, alleged in said eighteen article, and as to the concealment of the libellant after he reached the shore this defendant has no knowledge, information, or belief.

Twenty-first. That as to the matters set forth in the nineteenth article of said libel, this defendant is entirely ignorant, and therefore holds the libellant to strict proof thereof, except that this defendant expressly denies that the language or conduct of the agent of the Pacific Mail Steamship
238 Company at Acapulco (that is, the agent referred to in said nineteenth article) was in any way caused or instituted by this defendant. And defendant denies all connection with any of the matters alleged in the nineteenth article of said libel.

Twenty-second. That this defendant is ignorant of the matters contained in the twentieth article of said libel, and therefore denies the same. And defendant denies all connection with any of the matters averred in said twentieth article.

Twenty-third. That this defendant is ignorant of the matters contained in the twenty-first article of said libel, and therefore denies the same.

Twenty-fourth. That this defendant is ignorant of the matters contained in the twenty-second article of said libel, and therefore denies the same.

Twenty-fifth. That as to the matters set forth in the twenty-third article of said libel, this defendant admits the same to be true, except that
239 this defendant denies that he ever used any means to prevent libellant's return to California, and except also that this defendant is ignorant of the means or ability possessed by libellant after his banishment by said vigilance committee, to return to California, and therefore denies all the allegations of said twenty-third article in that regard, and except also that this defendant is ignorant of the condition of libellant's health, or his need of the advice or assistance of physicians, or his being in a hospital for the sick in New York, during his absence from the State of California, or during any portion of said absence, and therefore denies all the allegations of said twenty-third article as to these matters And defendant avers, in qualification of the admission hereinbefore made, that on the sixteenth day of October, A. D. 1857, the said vigilance committee repealed their sentence of banishment against libellant, and that at any time after said sixteenth day of October, A. D. 1857, said libellant could have returned to California and
240 to San Francisco without any risk or injury from, or molestation by, said vigilance committee, or any of the members thereof, and that this the libellant well knew.

Twenty-sixth. This defendant denies all and each of the allegations of the twenty-fourth article of said libel, and holds the libellant to strict proof thereof.

Wherefore this defendant prays that this honorable court would be pleased to pronounce against the libellant aforesaid, and to condemn the libellant in costs, and otherwise law and justice to administer in the premises.

JAMES T. WATKINS.

Dated San Francisco, March 21, 1861.

HALL MCALLISTER, *Proctor for Defendant.*

STATE OF CALIFORNIA, *Northern District, ss:*

James T. Watkins, of aforesaid State and district, being duly sworn, deposes and says that he has heard read the foregoing answer, and knows the

contents thereof, and that the matters therein stated are true to the
241 best of the knowledge, information, and belief of this deponent.

JAMES T. WATKINS.

Sworn to this 21st day of May, A. D. 1861, before me.

CUTLER McALLISTER, *U. S. Com.*

242 In the district court of the United States in and for the northern district of California.

CHARLES P. DUANE, libellant,
vs.
JAMES T. WATKINS AND J. S. WATSON, defendants.

Separate answers of James T. Watkins, defendant, to the interrogatories propounded to him in this cause:

To the first interrogatory he says: Yes.

To the second interrogatory he say: I proceeded in my ordinary course; did stop five or ten minutes.

To the third interrogatory he says: There was no deviation; there was no agreement. I had received orders to take passengers from the steamtug.

243 To the fourth interrogatory he says: Five or ten minutes.

To the fifth interrogatory he says: Yes; I knew some passengers were to come on board. I may have known that the libellant was among them, but think that I did not.

To the sixth interrogatory he says: Yes; for five or ten minutes.

To the seventh interrogatory he says: Yes.

To the eight interrogatory he says: I saw him talking; did not hear what he said.

To the ninth interrogatory he says: I saw no resistance.

To the tenth interrogatory he says: I received no orders, he had a steerage ticket. I took Mulligan and himself into the cabin, and treated them well.

244 To the eleventh interrogatory he says: I would not let him come to the cabin table; gave him his meals in the state-room. I gave him some of my own underclothes during the voyage to wear. He spoke to me; I advised him to go to New York; told him he must not leave at Acapulco.

To the twelfth interrogatory he says: Yes.

To the thirteenth interrogatory he says: I told him about libellant's being on board; gave no directions; D. B. Van Brunt was agent.

To the fourteenth interrogatory he says: I joined the association by signing their roll, but was not an active member; took no part in their proceedings; was never in their place but once, when I signed the roll.

To the fifteenth interrogatory he says: No; I have no knowledge
245 of any of the matters referred to in this interrogatory. I was not informed of any bond as described in said interrogatory, given to the Pacific Mail Steamship Company, nor do I know of their having received any such. I have received no bond or indemnity of any kind in the premises; neither have I received any promise of indemnity in the premises.

JAMES T. WATKINS.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

James T. Watkins, the foregoing defendant, being sworn, says that the foregoing answers subscribed by him are true.

J. T. WATKINS.

Sworn before me March 21, 1861.

CUTLER McALLISTER, *U. S. Com.*

246 District court of the United States of America, in admiralty.

CHARLES P. DUANE
vs.
J. T. WATKINS AND J. S. WATSON.

Please take notice that on Wednesday, the 20th inst., 1861, a motion will be made in the above-entitled cause to amend the libel therein, by inserting in lieu of the sum of fifty thousand dollars as damages claimed in the prayer of said libel, the sum of two thousand dollars as damages claimed. Such motion will be made at the hour of eleven o'clock on said day, or as soon thereafter as counsel can be heard, at the court-room, in the court-house, city of San Francisco.

Dated San Francisco, November 13, 1861.

NUGENT & JUDAH, *Proctors for Lib't.*

To HALL MCALLISTER, Esq., *Proctor for Respondent.*

247 I hereby consent that the libel in the above-entitled cause be amended as prayed for in the foregoing motion, and without motion or leave of court.

November 20, 1861.

HALL McALLISTER, *Proctor for Defendant.*

Endorsed: U. S. district court. Charles P. Duane *vs.* Watkins and Watson. Motion and consent to amend libel.

Filed Nov. 20, 1861.

W. H. CHEVERS, *Clerk.*

248 District court of the United for the northern district of California, in admiralty.

CHARLES P. DUANE
vs.
JAMES T. WATKINS AND J. S. WATSON, resp'ds.

By consent of proctor for respondent, and on motion of proctor for libellants, the libel of Charles P. Duane, in the above-entitled cause, is hereby amended by inserting in the prayer of said libel the sum of two thousand dollars as damages, &c., and erasing the words "fifty thousand dollars."

Nov. 20, 1861.

CHAS. D. JUDAH, *Proctor for Libellant.*

249 Endorsed: U. S. district court. Charles P. Duane *vs.* Watkins and Watson. Amendment to libel.

Filed Nov. 20, 1861.

W. H. CHEVERS, *Clerk.*

250 District court of the United States in and for the northern district of California, in admiralty.

CHARLES P. DUANE
vs.
JAMES T. WATKINS AND J. S. WATSON, resp'ds.

It is hereby stipulated in the above-entitled cause that a decree be entered therein in favor of the libellant, Charles P. Duane, against the respondents, James T. Watkins and J. S. Watson, for the sum of two thousand dollars and costs of suit, as prayed for in the libel as *as* amended herein.

Dated San Francisco, November 20, 1861.

HALL McALLISTER, *Proctor for Respondent,*
CHAS. P. JUDAH, *Proctor for Libellant.*

251 Endorsed: U. S. district court. Charles P. Duane *vs.* Watkins & Watson. Consent that decree may be entered for $2,000 and costs. Filed Nov. 20, 1861.

W. H. CHEVERS, *Clerk.*

252 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 20th day of November, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The Honorable Ogden Hoffman, district judge.

CHARLES P. DUANE
vs.
J. T. WATKINS, J. S. WATSON.

And now, at this day, the above cause being at issue, on reading and filing consent, and on motion of Charles D. Judah, proctor for libellant, it
253 is ordered, adjudged, and decreed by the court that the said libellant do have and recover of the said defendants, J. T. Watkins and J. S. Watson, the sum of two thousand dollars, together with his costs to be taxed.

OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: United States district court, northern district of California. Charles P. Duane *v.* Watkins and Watson. Decree awarding libellant $2,000 and costs.

Filed November 20, 1861. W. H. CHEVERS, *Clerk.*

254 District court of the United States for the northern district of California, in admiralty.

CHARLES P. DUANE
vs.
JAMES T. WATKINS AND J. S. WATSON, resp'd's.

The clerk of the above court will please enter satisfaction in full of decree entered in above cause in favor of libellant, Charles P. Duane, for two thousand dollars and costs of suit.

Nov. 20, 1861.

CHAS. D. JUDAH, *Proctor for Libellant.*

Endorsed: U. S. district court. Charles P. Duane *v.* Watkins and Watson. Satisfaction of judgment.

Filed Nov. 20, 1861. W. H. CHEVERS, *Clerk.*

256 I, William H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify that the foregoing papers, hereto annexed, constitute the judgment record in the cause entitled "Chas. P. Duane *vs.* Jas. T. Watkins and J. S. Watson."

Witness my hand and the seal of said court this 20 day of June, A. D. 1864.

[SEAL.] W. H. CHEVERS, *Clerk.*

258 In the circuit court of the United States for the State of California.

CHARLES P. DUANE, appellee,
vs.
R. H. PEARSON, appellant.

Testimony of witnesses, taken before his honor Judge Field, in open court, on Tuesday, the 20th day of May, of June, A. D. 1864.

C. H. Hewett, being sworn, testified as follows:

(Mr. McAllister, counsel for Pearson, appellant.)

Q. You were first mate of the John S. Stevens when Mr. Duane was put off her in 1856, were you not?

Ans. I was.

Q. What time did Duane come on board?

Ans. I think it was between two and three o'clock in the middle of the night, after midnight.

Q. Was any person placed at the gangway at the time he came on board?

Ans. I believe there was not.

259 Q. What was the custom about placing persons at the gangway?

Ans. It was customary to place the quartermaster there, but he was not there at the time. I was at the gangway myself when Duane came on board.

Q. What was the quartermaster generally put there for?

Ans. To inspect the tickets as the passengers came on board again to see if they are not stow-a-ways.

Q. What passed between you and him?

A. I asked him for his ticket.

Q. What did he say?

Ans. He said his ticket was in his carpet sack in his state-room, where he would go and get it and show it to me.

260 Mr. Cook, counsel for appellee Duane: I object to that as not set up in the answer or amended answer.

The court: He will take it subject to the objection.

Mr. McAllister: Did you let him pass?

Ans. I then went and reported to the captain that I thought Charley Duane had come on board the ship, and that I had asked him for his ticket and he said he would go to the state-room to find it. When I came back he was not there and I could not find him.

Q. You left him at the gangway then?

Ans. I left him at the gangway to go and report the same to Capt. Pearson.

Q. When you returned you could not find him?

261 Ans. I could not find him. I searched for him too.

Q. What did Capt. Pearson tell you?

Ans. He told me to see if he had a letter.

Q. Did you see Duane again before the ship left Acapulco?

Ans. No, sir.

Q. When did you next see him?

Ans. I saw him after we got to see.

Q. Did you take him to your room, or ask him to take a drink with you?

Ans. No, sir; nothing of that sort. I was not well enough acquainted with him at that time to do so.

Q. When Capt. Pearson left, on the day that Duane was put on board the Sonora, to go on board the Sonora, what were his orders to you?

262 (Objected to by appellant's counsel as incompetent and irrelevant. Taken subject to objection.)

Q. Capt. Pearson left to go on board the Sonora when you met her?

Ans. Yes, sir.

Q. What were his orders to you when he left?

Ans. He left word with me not to send Duane on board the Sonora until he sent word back whether I was to send him or not. He would go and arrange with Capt. Whiting about the matter.

Q. After that did he send you word from the Sonora?

Ans. He did.

(Same objection as above.)

Q. Where was he when Duane was put off the Stevens?

A. On board the Sonora.

Q. At the time Duane was put off the Stevens did you draw a pistol?
Ans. I did not.
(Objected to as leading.)
263 Q. Did you draw any weapon?
Ans. I did not.
(Same objection.)
Q. Did you have any weapon?
Ans. I did not.
(Same objection.)
Q. At the time that Duane was, under the orders of Pearson, put off the Stevens were you armed?
(Same objection. Admitted.)
Ans. I was not.
Q. Give to the court an account of what occurred after you received the order from Capt. Pearson to send Duane on board the Sonora.
Ans. The boat that brought the word from Capt. Pearson was in charge of chief engineer and Mr. Hagan. Hagan brought word that Capt. Pearson wished me to send Duane on board the Sonora. It being dark I went to search for Duane with a lantern in my hand, and I also ordered the officers that were immediately under me to assist me; and after a considera-
264 ble amount of time, not being able to find him, I went on the upper deck and searched around the boats, and there I found Mr. Duane stowed away under the forward boat on the port side of the ship, and I told him, "Mr. Duane, come out here; you have got to go board the Sonora; I have got my orders to put you on board there, and you have to go." And he came out and walked down to the after-gangway, the foot of the ladder that leads from the upper deck, and there was quite a disturbance there; he objected to going; passengers told him to resist, and I remonstrated with the passengers. Mr. Duane, he was very loud in his expressions about not going; I told him I had nothing to say about that, but he had got to go out of the ship, that was my orders, and the ship would remain there until he went on board the Sonora. After a great deal of persuasion I got him down into the boat, but I used no weapons, nor didn't see any weapons
265 drawn by either party.
Q. Just state whether any persons took hold of Duane to force him down.
A. No, there were no hands laid upon him; none whatever. I was the nearest man to him, and I never touched him.

Being cross-examined by appellee's counsel said witness testified as follows:
(Mr. Cook.) Q. Are you now in the employ of the steamship company?
Ans. I am not, sir.
Q. When did you leave it?
Ans. Nigh two years ago.
Q. Was you ever first officer except that particular trip?
Ans. Yes.
266 Q. How often?
Ans. I never was anything else in the Pacific Mail Steamship Company's service.
Q. What is your occupation now?
Ans. Master of a vessel.
Q. How long had you been first mate?
Ans. I joined to company in '51 as first officer, and I have been first officer ever since I joined up to the time I left.
Q. When was that?
Ans. Two years ago.

Q. That you are certain of—positive that you were first officer on one of their ships from '51?

Ans. Yes, sir.

Q. How long had you been with Pearson?

Ans. That was my first voyage with Pearson.

Q. How long had the John L. Stevens been lying to before you took the lantern to look for Duane?

Ans. Well, perhaps three quarters of an hour; half an hour or three quarters. My best opinion is about three quarters of an hour.

267 Q. During that time you had not looked for Duane at all?

Ans. I was awaiting Capt. Pearson's orders.

Q. You had not looked for him?

Ans. I had kept my eye on him; I had expected they would send for him, and I had sent the officers that were under my charge to keep their eye on him, and they could not find him.

Q. I want to know if before you got the orders you did not search that ship, and have your officers under you search for him.

Ans. No, sir.

Q. That you swear to positively?

Ans. Yes, sir.

Q. Where did you first look for him?

Ans. I went around the state-rooms.

Q. Didn't you go to the water-closet to look for him?

Ans. I can't say that I did. I went down into the steerage.

Q. Did you go into the water-closet?

Ans. I cannot swear that I did.

268 Q. Will you say whether you did or not?

Ans. I might have gone there and I might not. I cannot swear to that point.

Q. Did you hear any person state in front of the water-closet that he was there?

Ans. I did not.

Q. You swear to that positively?

Ans. I do.

Q. You cannot state whether you went into the water-closet to look for him or not?

Ans. No, I cannot.

Q. How long did you search before you found him?

Ans. Well, I suppose 20 minutes.

Q. Did not Mr. Duane draw a knife?

Ans. He did not.

Q. Will you swear to that positively?

Ans. Yes.

Q. Just as positively as to anything else you have sworn to?

Ans. Yes.

Q. Have you talked with Capt. Pearson about what you know about this case?

269 Ans. No, I have not.

Q. Not a word?

Ans. Not a word.

Q. Have you with any one else?

Ans. With no one else. I went up to McAllister's office yesterday morning; that is all.

Q. Did you talk with him?

Ans. Yes.

Q. Tell him what you knew?

Ans. Not all, most generally.
Q. Did you tell him all you knew generally?
Ans. Yes, sir.
Q. Never talked with Capt. Pearson about it in your life?
Ans. Oh, yes, I have talked with him directly, or indirectly I mean.
Q. Then you talked with him?
Ans. I have talked generally about it.
Q. Did you tell him what you have been telling to-day?
Ans. Nothing to the point.
Q. About what did you talk to him?
270 Ans. About putting him out of the ship generally.
Q. That was before you put him out?
Ans. No; since the circumstance occurred.
Q. Did you tell him the particulars?
Ans. He knew as well as I did.
Q. Was he on board?
Ans. No. I told you a short time ago that he was on board the Sonora.
Ans. He knew, I suppose, from what other people told him.
Q. He did not know of his own knowledge?
Ans. He was not there.
Q. How many times have you talked to Capt. Pearson about this, according to your best recollection?
Ans. In Mr. McAllister's office I spoke in his presence yesterday morning.
Q. Have you had your statement taken down?
Ans. Not that I am aware of.
Q. Did not Mr. McAllister take it down?
271 Ans. It is four or five years ago. I don't remember the matter much.
Q. When was it that you was at Mr. McAllister's office?
Ans. The other morning.
Q. Can't you remember what occurred there as well as what occurred in '56 on board the John L. Stevens?
Ans. Of course I can.
Q. Can't you tell, then, whether Mr. McAllister took down your statement?
Ans. Oh, yes. He did not.
Q. That you are positive of?
Ans. Yes, sir.
Q. Did you make a statement in writing?
Ans. I did not.
Q. Never?
Ans. Never.
Q. Did Capt. Pearson ever take down your statement in writing?
Ans. Not a word.
Q. Where was you when this case was tried before?
Ans. I was down in Central America.
272 Q. How long have you been in port?
Ans. I have been in port now about a month.
Q. Duane resisted pretty strongly, did he not?
Ans. He resisted morally. He did not use any force about the matter. I got him out of the ship by moral suasion.
Q. Did he resist?
Ans. He objected to go.
Q. Didn't he say that he would not go unless he was taken by force?
Ans. He did.
Q. Did you tell Capt. Pearson that?
Ans. I don't know whether I did or not. I guess I did not.

Q. Why didn't you, if you undertook to tell him the facts of this case?

Ans. I guess he knew about as much as I did. My best opinion is, I told him the whole circumstances, very likely I did tell him that. I cannot
273 say exactly whether I did or whether I did not. You must make some allowances for a man's memory in four or five years. I have had other business to attend since that.

Q. I want to know if you will swear positively that you did not draw and cock a pistol?

Ans. Yes. That I will swear to as many times as you like.

Q. Are you as positive of that fact as of any other you have sworn to?

Ans. Yes.

Q. Do you remember Judge McAllister's coming up and talking to Duane?

Ans. Yes.

Q. Don't you remember Judge McAllister telling him to put up his knife.

Ans. I do not.

Q. Will you swear that he did not so tell him?

Ans. I will swear that I did not hear the conversation. I did not see him draw a knife, nor did not hear Judge McAllister tell him to put it up.

274 Q. How long was it after you got the order before you got him by moral suasion to go into the boat?

Ans. I have told you about twenty minutes.

Q. Did Duane consent to go until Judge McAllister came out and talked to him?

Ans. He did not.

Q. You say Mr. Duane came on board about two o'clock; are you positive of that?

Ans. It was between two and three I said.

Q. Were you on duty then?

Ans. I was.

Q. Where was the man who belonged to that particular position?

Ans. I guess he was not about. He was not there.

Q. Did you see him before that?

Ans. I saw him I guess an before. I did not see him after.

Q. How long did you stay at the gangway after he came on board?

Ans. I staid long enough to go and tell Capt. Pearson, and then go
275 and hunt for Duane.

Q. Why did you allow him to come on board without showing his ticket?

Ans. I could not object to his coming on board, because I did not know whether he was a passenger or not.

Q. Didn't you know he was not a passenger?

Ans. Ans. I did not.

Q. Would not you have been likely to know if he had been on from Panama up?

Ans. It is not likely I should. The first officer of the steamers have got so much to do that they have not time to attend to those outside things.

Q. How long have you known Duane?

Ans. I had not known him at all; only seen him on the streets.
276 Probably I had seen him once or twice before, on the streets.

Q. How did you happen to be at the gangway?

Ans. I happened to be there on duty. I happened to be there when he came up the gangway.

Q. Were you there in charge of that gangway?

Ans. I was in charge of everything on deck.

Q. Were you in charge of that gangway?

Ans. I was, as well as everything else around.
Q. Did you not shake hands with Mr. Duane?
Ans. I cannot swear to that.
Q. Will you swear that you did not?
Ans. No; I will not.
Q. Was not it daylight when Duane came on board?
277 Ans. No, sir; it was dark.
Q. Will you swear positively to that?
Ans. Yes, sir; I will.
Q. How did he come off to the ship?
Ans. I suppose that he came off in a boat. The first I saw of him he was coming up the gangway.
Q. Was the ship ladder down?
Ans. It was.
Q. How long had the ship been in?
Ans. Two or three hours, I think.
Q. When did you next see Mr. Duane?
Ans. Not until after we had got to sea again.
Q. Will you swear that he was not on the deck publicly all the morning?
Ans. To my knowledge he was not.
Q. Will you swear he was not?
Ans. No, I will not. I can swear that I did not see him, and I was
278 around the deck as much as any man.
Q. Did you say it was two or three hours after the steamer got in that Mr. Duane came on board?
Ans. To the best of my recollection it was.
Q. Did you know what time the steamer got in from Acapulco?
Ans. About eleven o'clock, I think I can swear that it was dark when he came on board the ship.
Q. Didn't she get in just daybreak?
Ans. No, sir; it was in the middle of the night when she got in, to the best of my recollection.
Q. What did you do after you went to Capt. Pearson and told him that Duane came on board, and came back and could not find Duane? Did you go back and report to Pearson?
Ans. No, I did not.
Q. Why didn't you?
Ans. Because I did not find him. I did not know whether he had
279 gone ashore or not.
Q. That is the reason why you did not make another report?
Ans. Yes.
Q. Did you look for Mr. Duane?
Ans. I went around the entire decks once to try and find him.
Q. What had Pearson told you to do?
Ans. He told me to see if he had a ticket.
Q. Is that all he told you?
Ans. That is all.
Q. He did not make any objection to his going on board provided he had a ticket?
Ans. He did not say anything of that sort to me.
Q. If you were not stationed there for the purpose of not telling men come on board who had no tickets, why did you notice him?
Ans. Because I thought it was Charley Duane.
Q. Why should you report Charley Duane more than any other
280 person?
Ans. Because I thought it looked like him.

Q. Why should you report him more than anybody else?

Ans. I cannot say particularly why I should. I would report any other person just the same way if I had seen him before.

Q. If you were not acquainted with Duane, only knew if by sight, did not know that he had been on the steamer from Panama down to Acapulco, how did it happen that you allowed him to go on board when he told you that his baggage was on board?

Ans. I did not allow him to go on board. He came on without my letting him.

Q. You did not tell him not to come on board?

Ans. No.

Q. Didn't try to prevent him?

Ans. No; he told me he had a ticket, and that his carpet sack was in his room.

Q. What was the man's name who was stationed there?

281 Ans. I cannot say. The quartermasters—we usually call them Dick, Tom, and Harry.

Q. How many quartermasters had you on board of that ship?

Ans. Four.

Q. You do not know which one it was?

Ans. No.

Q. Can you give me the names of the four?

Ans. No, sir.

Q. Nor either of them?

Ans. No, sir.

Q. Do you know the name of the second mate?

Ans. Yes. His name was Powers.

Q. But you did not remember the name of either of the quartermasters?

Ans. No; I do not. We usually call them by their christian names.

Q. What were their christian names?

Ans. I don't know. My memory is not very good for names, but first rate for facts.

Q. How is your memory generally?

282 Ans. First rate; generally pretty good.

Q. Was Capt. Pearson asleep when you went to his room?

Ans. I think he was not.

Q. Was he in bed?

Ans. He was in bed.

Q. Why didn't you look for the quartermaster instead of Capt. Pearson, the man whose business it was to look for those things?

Ans. It is not usual for an officer to report to a quartermaster when people come on board that you have a doubt of being a passenger.

Q. Now, sir, I want to know if you will swear positively that you saw Duane go on board of that ship?

Ans. Yes, I will.

Q. Or was it not all made up?

Ans. I don't make anything up. I swear to facts.

Q. But you are unwilling to give the name of any quartermaster on board that ship, either christian or surname.

283 Ans. I am not unwilling, but do not remember the names.

Q. Do you remember the name of the purser?

Ans. Yes; his name was Schell.

Q. Why is it that you remember the names of the second mate and the purser and do not remember the names of the quartermasters?

Ans. It would be no more likely for me to remember the names of the quartermasters than it would be the sailors.

Q. Do you know the physician's name?
Ans. Yes.
Q. Will you tell me what year that was?
Ans. '56.
Q. What time in '56?
Ans. June; the month of June.
Q. What time in June?
Ans. About the 25th; somewhere about the 25th.
Q. How long did you lay in Acapulco at that time?
Ans. Well, I suppose about 4 hours.
284 Q. Only lay there about four hours?
Ans. Four or five hours. I cannot say exactly how long we lay there at that time.
Q. How long after you left did you meet the Sonora?
Ans. About two days and a half. She ought to have been about two days and a half to get to the Gulf of California. About two days and a half to the best of my recollection.
Q. Did you meet her by day or night?
Ans. Night; the first part or the middle of the night. I think it was the first watch, between eight and twelve, if I remember right.
Q. Don't you know that at the time you have spoken that the quartermaster was down-stairs taking a drink with Duane?
Ans. I don't know that he was. I won't swear to that. I did not see him at the gangway, but I was at the gangway myself when he came up.
285 Don't you know that just after Duane came on deck he met the quartermaster and they went away together?
Ans. No, I do not. I will swear I did not see that. They might have done it without my knowledge. I will swear that he was not there when I came back, and I was not away more than two minutes.
Q. Who was there up to the time you started?
Ans. Nobody there.
Q. Nobody there to keep people away until you sailed?
Ans. No.
Q. How long after he got on board before you started?
Ans. I suppose about a couple of hours.
Q. And nobody there after that to keep persons who had no tickets from coming aboard?
Ans. That I cannot swear to either. I don't remember whether there was or was not.
286 Q. How long did you stay there?
Ans. Long enough to stop Duane and ask him if he had a ticket.
Q. How long?
Ans. I suppose about two minutes or two minutes and a half. I did not have a watch in my hand to time the man. I happened to be around there just when he came up; not with any intention of seeing Duane or anybody else.
Q. That was not what you was there for?
Ans. If passengers were there as I came along of course I exercised that portion of my duty of inspecting their tickets.

J. B. G. Isham, being duly sworn, testified as follows:
Question (Mr. McAllister.) How long were you in the service of the Pacific M. S. S. Co., as master, on the line between here and Panama?
Ans. From '51 to '55; about four years consecutively.
Q. What was the usage in reference to purchasing tickets before
287 passengers came on board?

(Objected to as immaterial and incompetent. Admitted subject to objection.)

Ans. They purchased their tickets before they came on board. That was the usage.

Q. How was it at Acapulco?

Ans. The same.

The court. Was there a ticket office at Acapulco?

Ans. There was.

Mr. McAllister. There was an agent there?

Ans. There always was an agent who sold tickets there.

Q. What was the practice at the gangway?

Ans. That no person was admitted on board without a ticket, of any description, unless by special permit or invitation of an officer or somebody competent to give it.

Q. What was done both here and leaving here in relation to search-
288 ing for stow-a-ways?

(Objected to. Waived.)

Q. Suppose parties were found on board as stow-a-ways, what was usually done with them?

Ans. I will tell you what I done with them.

Q. I want to know what was done generally.

Ans. I know nothing what was done outside of my own experience.

(Objected to.)

Q. I propose to show that passages were always paid for before the steamer left the wharf; that that was the universal practice of the company in reference to exacting payment of fare before the ships left the port.

Ans. It never has been objected to if a person had not time to get his ticket for him to come on board to the purser and pay and get his ticket while search was being made; and tickets have been bought on board of my ship after the ship had left the wharf by passengers coming on board
289 and requiring or requesting a ticket after the ship was out to sea.

Q. Do those persons who come on board as stow-a-ways come and pay their passages in this way?

Ans. No, sir; those are not considered stow-a-ways.

Q. In reference to a person found as a stow-a-way, what did you do with him? What was your experience?

Ans. When a man was brought up as a stow-a-way the condition in which he was found was reported. If he came on board, if his condition was such as would indicate his *his* having come on board for the purpose of stealing a passage, the first thing I always did was to have him put in irons.

Q. How about transferring him back?

Ans. Well, it never has been convenient for me to do so. I never have performed that operation.

Q. Have you, in your experience, known other captains to send such
290 persons back by other steamers?

Ans. I have heard of it.

Being cross-examined, said witness testified as follows:

Mr. Cook. How long have you known Duane?

Ans. I think he left New York in the latter part of December, 1849, on board of the same ship with me and came to Panama.

Q. He prevented a mutiny on board of your ship, didn't he?

Ans. Not that I am aware of.

Q. Here in town—in port?

Ans. No, sir.

Q. Didn't he once go down here and prevent a difficulty when they attempted to assault you?

Ans. No, sir.

291 Theodore Schell, being duly sworn, testified as follows:

(Mr. Cook. I shall object to the examination of Mr. Schell, inasmuch as his deposition was taken in the court below.)

(Testimony admitted subject to objection.)

Mr. McAllister. Were you purser of the John L. Stevens, Mr. Schell, at the time spoken of here when Mr. Duane was put on board the Sonora?

Ans. I was.

Q. When did you first know that Duane was on board after leaving Acapulco?

Ans. I think about an hour after the ship sailed.

Q. That was the first time you knew he was on board?

Ans. Yes, sir.

Q. Where did you first see him?

Ans. At my office, sir.

Q. What occurred there?

Ans. He told me that he was on board without means, without a ticket, or means to procure a ticket. I told him that I had had orders from Capt.

292 Pearson to report to him at once if he or any others that had been sent away by the vigilance committee came on board the ship at Acapulco, and that I should have to do so.

Q. What else occurred?

Ans. I immediately reported to Capt. Pearson.

Q. Did you introduce him to any ladies that were in your room?

Ans. I have no recollection of anything of that kind.

Q. Take a drink with him?

Ans. I do not think I did, sir. It is possible, however, I might have done so, but I don't recollect it.

Q. Was his passage money or fare tendered during the passage?

Ans. Not to my recollection.

(Objected to as contradictory to stipulation. Admitted, subject to objection.)

Ans. continued. But the fact of my reporting to Capt. Pearson would

293 take it out of my power to take any money from him, because it took him entirely out of my hands. I had no right to take any money without further orders from Capt. Pearson.

Q. Did anybody offer you passage money?

Ans. Not to my knowledge.

(Objected and admitted as above.)

Ans. continued. It is my impression that I had orders not to take them back, and that he gave orders not to take money from them, but to report them to him.

Q. Had you previously transferred stow-a-ways to other steamers and sent them back?

Ans. It had been done on several steamers that I was purser on, I think.

Q. That was done not only by Capt. Pearson but others on the line, you say?

Ans. Yes, sir.

Q. Did you ever know of Duane's being on the ship until after you

294 got to sea?

Ans. Not until I went to my room and found him there.

Q. That was after you went to sea?

Ans. Yes, sir.

Q. What time did you arrive at Acapulco?

Ans. I can't tell exactly. My impression is that we arrived in the night and left early in the morning.

Q. Was any money actually offered to you in Mr. Duane's behalf, either by Judge McAllister or Mr. Scott or any other passengers?

Ans. I think not, sir.

Being cross-examined, said witness testified as follows:

Mr. Cook. Where did you first see Duane on board of that ship?

Ans. He was in my room.

Q. Publicly in your room?

Ans. Yes.

Q. It was a public room, was it not?

295 Ans. No, sir; it was not a public room. It was my private office.

Q. It was the purser's room?

Ans. Yes, sir.

Q. You found him there?

Ans. I found him there, sir.

Q. Now, was it not daybreak when you arrived at Acapulco?

Ans. My impression is that it was in the night some time.

Q. What time in the night?

Ans. I cannot swear to a positive time, Mr. Cook.

Q. Will you swear that it was not daybreak?'

A. No, sir; I will not swear positively that it was not or was.

Q. You were up, were you not?

Ans. I was up.

Q. What did Capt. Pearson say when you reported to him that Duane was on board?

Ans. I don't know, sir, what he did say. I think he sent for Duane.

296 Q. Do you recollect Judge McAllister's coming to you and offering to pay Duane's fare?

Ans. I did not.

Q. Your memory is as good upon that as any other subject, is it not?

Ans. I think it is.

Q. Didn't you sit down and quite a chat in your office with Duane before you reported to Capt. Pearson?

Ans. I don't think I did.

Q. And didn't you, as a matter of fact, take a drink?

Ans. It is possible I did.

Q. Isn't that the probability?

Ans. I think it is very probable. I may have done so, taken a drink with Duane, but I don't recollect the circumstance. In the first place, I never had been well acquainted with Duane. I had known him in San Francisco; that is, had a passing acquaintance; never met him or knew him to speak with him before. It is probable I may have asked him to a drink.

297 No doubt if Mr. Cook had been there I should certainly have done so.

Q. Would you have taken Mr. Duane's fare if he had presented it to you?

Ans. I think not, sir.

Q. Why?

Ans. Because Capt. Pearson had ordered me to report to him, and it took it entirely out of my hands.

Q. But you knew he was an exile?

Ans. Yes, sir.

Q. And for that reason would not have taken his fare?

Ans. No, sir; nor any other person's.

Q. Did you not state in your deposition in this language: "I should certainly have taken Duane's fare if he had offered it, had I received no instructions from the captain. Mr. Duane did not pay anything for his fare or expenses while on board."

Ans. I did, and say so now. Had I received no instructions I
298 should certainly have taken his fare.

Q. Did you ever know any person who was treated as a stow-a-way refused a passage when he offered to pay from the simple fact that he was a stow-a-way?

Ans. I don't think I have. We generally suppose a stow-a-way is a man who secretes himself on board and tries to get passage without paying for it.

Q. But suppose you find a man under such circumstances as to make him a stow-a-way, did you ever know his passage refused when he offered to pay his fare?

Ans. No, sir; they generally take it.

299 T. J. L. Smiley, being duly sworn, testified as follows:

Mr. McAllister. You were a member of the executive committee of the vigilance committee, were you not?

Ans. Yes, sir.

Q. When did the vigilance committee close their active organization and withdraw the penalties that they had annexed to the parties they had sent away?

Ans. (taken subject to objection.) The resolution to which you refer was passed on the 16th of October, 1857, and was promulgated on the 17th.

Q. The resolution revoked the penalties of banishment?

Ans. Yes, sir.

300 Q. That was published in the public journals of the day, was it not?

Ans. Yes, sir.

Q. With an address by the committee?

Ans. Yes, sir.

Q. Do you recollect the date that Hetherington and Brace were hung by the committee?

Ans. I do not recollect the exact date.

Q. I will ask you whether in the month of July, 1856, when there were some anticipations that some of these banished parties would return, whether armed men were sent by the committee to see if they returned?

(Objected to as immaterial. Admitted subject to objection.)

Ans. Every steamer, on the steamer being telegraphed, there was always a band of men assembled ready to search for any of the exiles who might return.

Q. I will ask Mr. Smiley this question: According to the best of your judgment, suppose Duane had returned here in July, 1856, while the
301 committee was in active existence, what, in your opinion, would have been his chances of being hung?

Ans. I think he would have been hung.

(Objected to as incompetent, irrelevant, and immaterial. Admitted subject to objection.)

Being cross-examined, said witness testified as follows:

Mr. Cook. Do you know Mr. Gallagher by the vigilance committee?

Ans. Yes, sir.

Q. Was not the penalty affixed to his return death, the same as it was to Duane's?

Ans. I believe it was.

Q. Did he not return and appear publicly in these streets before you rescinded that resolution?

Ans. I think not.

Q. Will you swear that he did not?

Ans. To the best of my recollection he did not.

302 Q. What makes you think that Duane would have been hung if he had come back here?

Ans. First, the force necessary, the force that could do it, regularly assembled, and it merely depending on the contingency of being caught.

Q. You think if you had caught him you would have hung him?

Ans. I don't think there is any doubt about that, sir.

Q. Suppose he had came back and Capt. Pearson had left him on the steamer, and then Duane had consented, on the assurances of his being hung if he remained here, to stay on board the steamer until she went back and then to go on her again?

Ans. I think he would have been taken.

Q. Even if he had been willing to return?

Ans. I think so, sir.

303 Q. How did the committee happen to, and for what reason did they, rescind their death penalties against those men that they sent out of the city?

Ans. I drew the resolution myself and urged it through, and all I can give is my own argument.

Q. What was the reason?

Ans. One was that there was no danger to be apprehended from them, and it was a good deal of trouble, at the time every steamer was telegraphed, to get a body of men together. It was a good deal of trouble, and I wanted to get out of the scrape myself. The grand reason was that the necessity for it had ceased, and there was no danger that the bad men who had been sent away would return and do any more harm.

Q. You thought the men you considered bad could return and do you no further harm?

Ans. We were not afraid of their doing us any injury.

304 Q. What did you send them away for if you did not fear them?

Ans. They might have been sent merely as a punishment.

Q. For about a year prior to this banishment hadn't you personal animosity to Duane?

Ans. I never had.

Q. Did you not on one occasion, about a year before that, give the only vote out of 32 in the board of fire delegates against Duane?

Ans. That might have been.

Q. Do you remember whether it was so or not?

Ans. I do not remember that it was or not. There was no personal animosity. It might have been a matter of feeling or judgment.

Q. Don't you remember a trial in that board as to whether his orders should be obeyed or not, and a vote was taken and 31 voted in favor of sustaining his orders and you voted against it?

305 Ans. I don't recollect that it was so; it might have been.

Q. Don't you recollect there was such a trial?

Ans. I do not.

Q. Were you and Duane on speaking terms after that trial, about a year before his banishment, up to the time he was banished?

Ans. I never have been on speaking terms with him, or cordial terms.

Q. Were you as much after that time as you were before?

Ans. I don't remember of there being any difference one way or the other. I never recognized him as an acquaintance.

Q. Haven't you taken drinks with parties with Duane?

Ans. I don't remember that I ever did.

Q. Have you not been to him time and again to report dangerous places where fire might break out?

Ans. I might have done that; very likely I did report to Mr. Duane
306 when cisterns were out of order, or when there were dangerous places, just as any good citizen would.

Q. Didn't you take drinks with him on such occasions?

Ans. I don't know that I did. I could not swear that I did not, but I don't think I ever did.

R. H. Pearson, being duly sworn, testified as follows:

Mr. McAllister. Are you the defendant in this case, the appellant?

Ans. I believe I am.

Q. Were you the master of the John L. Stephens at the time of these transactions?

Ans. Yes, sir.

Q. How long have you been sailing on this coast, sir, as a master?

Ans. I arrived here April 1st, 1849.

307 Q. You continued sailing on this coast down to what time?

Ans. Until a little less than a month ago. I have been in the service of the Pacific Mail Steamship Company over 15 years.

Q. Did you leave here at any one time and go home and stay some time?

Ans. Yes; I have been home several times.

Q. What year did you go home?

Ans. I think I was home in '52.

Q. After 1856 what time did you go home?

Ans. I think I have been home twice since 1856.

Q. What years?

Ans. I have not kept it in my mind sufficiently to state perfectly.

Q. Were you here when the vigilance committee was organized—when James King was shot?

Ans. I was.

308 Q. Did you at that time join the vigilance committee, or at any time subsequently?

Ans. No, sir.

Q. Did you ever visit their rooms or connected yourself with them in any way?

Ans. I never connected myself with them in any way. I visited their rooms out of curiosity after they disbanded.

Q. Never connected yourself with them in any way?

Ans. No, sir.

Q. When did you hear of the banishment by the vigilance committee of the libellant here, Duane, and others? Where did you first hear of that?

Ans. I don't recollect whether we heard of it at Panama or Acapulco.

Q. You heard that either at Panama or Acapulco?

Ans. I think so. My memory is a little treacherous about those things.

Q. Did you issue any orders to Schell, the purser, about these exiles?

309 If so, what?

(Objected to as incompetent and immaterial. Admitted subject to objection.)

Ans. I may have ordered him to refer the matter to me in such cases. I don't remember distinctly about it. I generally take charge of all those things myself in regard to stow-a-ways, and give the purser his orders.

Q. Did you receive the San Francisco papers at Acapulco?

Ans. I think so, sir.

Q. When did you first know or hear of Duane's being on the steamer?

Ans. The morning after we sailed; some time during the day after we sailed. We sailed, I think, before daylight of the morning, and it was during that day. The day begins at midnight.

Q. Do you remember the conversation with Mr. Hewett that he has spoken of?

310 Ans. About his coming up to about the ticket?

Q. Yes?

Ans. I cannot say I do. I have tried to call it to mind, but I can't say I do. He might have come to me, but in the number of things that I had to attend to in all probability it slipped my mind.

Q. You first heard that Duane was on board after you sailed?

Ans. Yes. I cannot exactly state how many hours we were out, but it was some time, I think, during the day. But we were quite a distance out.

Mr. Cook. Before you knew he was on board?

Ans. Yes; that is—I want you to understand me distinctly now—that it is possible that Hewett may have come to me, and reported, as he says,

311 but I have no recollection of it whatever.

Mr. McAllister. Did Mr. Duane come on board publicly or secretly, so far as you know?

Ans. Secretly.

(Objected to as leading.)

Ans. cont'd. If he had come on board publicly, he would have come on board like a man, with a ticket or the equivalent and said, "Here I am and want to go to San Francisco." But he never did that, to my knowledge.

Q. When first reported to you, you say the steamer was several hours out?

Ans. Yes.

Q. What had been the usage and practice with reference to stow-a-ways?

(Objected to as irrevelant, immaterial, and incompetent. Admitted subject to objection.)

Ans. The usage has been various. If a man came aboard and skulked away, and kept himself out of sight until I found him, if he offered

312 his money, then I could put him ashore if I pleased for his attempt to steal. I have put them into the coal hole and set them to work, and as often as I could I have put them out of the ship on to others, as I met them, by orders of the company.

Q. You say you conceive you had a right to put men ashore who came on secretly?

Ans Yes, sir.

Q. When was the fare always collected; at what point of time?

Ans. As soon as convenient after sailing. If a man did not have time to go to the office and get his ticket, and come aboard before the ship's sailing and said he wished to pay his passage, it was always taken.

Q. As a general thing when was the fare collected, before she ship sailed or afterwards?

313 Ans. As a general thing they paid their passage at the office. No honest man comes aboard in any other way unless it is by force.

Q. Was there an office at Acapulco?

Ans. There was.

Q. Did they sell tickets here?

Ans. Yes, sir.

Q. What was the first communication between Duane and yourself after you heard that he was on the steamer?

Ans. He came up on the upper deck amidships. I think Schell sent him up there.

Q. State what passed between you and himself.

Ans. I asked him if had a ticket, and he said no. I asked him if he had the money to pay his passage, and he said he had not. I told him, if my memory serves me aright, that I should put him aboard the first down ship I met, and send him back to Acapulco, where he came from.

314 Q. Did you say anything in reference to your sympathies with the vigilance committee or your upholding their acts?

Ans. I don't remember saying anything of the kind to him. I had very little conversation with him; about as short as I have stated.

Q. Anything else occur beside what you have stated?

Ans. Nothing occurred, except I did it, put him off.

Q. Had he never saved your ship from fire; the Stevens or any other ship you commanded?

Ans. Where?

Q. Either here or elsewhere?

Ans. No, sir, not to my knowledge; never was in any jeopardy, any command that ever I had.

315 Q. Why did you tell Mr. Duane that you would send him back in the first down ship?

Ans. Because I considered him a stow-a-way, having no ticket and no means to buy one.

Q. At that time what was your judgment as to what would happen in case he returned?

Ans. My judgment then was that it was dangerous for him to do it, and I think I had orders from the company not to bring him back. That is my impression. I should have the writings to show, but they were burnt on the Gate.

Q. Did you say to him that you would inform the vigilance committee of his arrival as soon as he arrived here?

Ans. I don't recollect.

Q. What do you know about Duane's passage money being offered or not offered, what was said about that?

316 Ans. No person offered Duane's passage money.

Q. State what did pass about that.

Ans. All that passed in regard to the passage of Duane is this: Your father was a passenger, and he came to my room and said that he thought that he and some others would become responsible for his passage money.

(Objected to as contradictory to the stipulation concerning the matter to which the evidence refers.)

Ans. continued. I don't propose to tell anything here but what is so. I understood him that he had not the means by him, but he thought himself and some others would become responsible for his passage. I told him that I could not take that.

Q. Was any offer of money ever made?

317 Ans. No offer of money whatever. A man's note is not good at the office now, and I myself should have become responsible had I accepted their promise to pay.

Q. Had you any malice against Duane? or had you any previous difficulty with him?

Ans. No, sir; I never met him, hardly. I should not know him if I had met him in the street.

Q. How did you stand with reference to the vigilance committee, so far as your sympathies were concerned?

Ans. Well, my sympathies were various.

Q. Just state what your state of feeling was about the matter.

Ans. I thought when they began it that they were going to do something that was right; and I was glad when they stopped it. So far as I

318 know about it, I was glad to see it done without any trouble or difficulty.

Q. State whether or no your sympathies, whatever they might have been, had anything to do with your putting Duane off the ship.

Ans. My sympathies were with him this far: I did not put him in the coal hole, nor did not make him work. I treated him better than I ever did treat a stow-a-way. I allowed him to go to the second-cabin table.

Q. Before deciding to put him on board the Sonora what did you do and whom did you consult with?

Ans. Well, I talked with your father about it.

Q. Did you go on board the Sonora?

Ans. Yes, I did.

Q. Who was captain of the Sonora?

Ans. Capt. Whiting.

Q. What orders did you leave upon going on board the Sonora?

319 (Objected to as incompetent. Admitted subject to objection.)

Ans. I left word with the mate if I sent for him to send him aboard, and I went to see Capt. Whiting to get the latest news, &c.

Q. Did you see Capt. Whiting?

Ans. I did.

Q. Did you consult with him about the matter?

Ans. Yes, that is what I went for, one thing.

Q. How long did you remain before you sent for Duane?

Ans. I suppose there might have been 15 or 20 minutes before the boat started off; I was in conversation with Capt. Whiting in his own room.

Q. Did he give you an account of the condition of affairs up here?

(Objected to as immaterial. Admitted subject to objection.)

Ans. Capt. Whiting told me not to take him up by no means; that

320 they would certainly hang him, and advised me to deliver him over to him, and he would persuade him to go on; and he informed me that he had orders not to bring any of them back. I think that was our conversation, and I sent for Duane after this conversation with Whiting; sent the boat back for him.

Q. Did you know of any actual force being used to bring him on board, either at the Sonora or when he left the Stevens?

Ans. I never heard of any.

Q. You were on board the Sonora when he arrived there?

Ans. I was.

Q. You left the Sonora reached there?

Ans. I did.

Q. Had you ever hung men at the yard-arm previously?

Ans. I heard here this morning that I did. That is the first.

Q. Had you ever done it?

Ans. Not to my recollection.

321 Q. Would such an event have been likely to make an impression upon your memory?

Ans. I think it might.

Q. Is Capt. Whiting dead?

Ans. Yes.

Q. What other of the officers that were in those ships at that time are dead?

Ans. The officer in charge of the boat, Mr. Hagan, is dead.

Q. Was there any liquor bar on board your steamer at that time?

Ans. No bar, sir. We had a wine-room, and sold nothing by the glass.

Q. Irrespective of your right to send Mr. Duane back as a stow-a-way, what was your motive for doing it?

Ans. Well, I sent him aboard of the Sonora, sent him back to save his life, for I really believed, from what Capt. Whiting told me, that they would hang him.

322 (Objected to as incompetent. Admitted subject to objection.)

I did not want to have him hung if I could help it. I thought it might bring me into difficulty also. I wished to avoid anything of the kind.

Q. Is there any further statement you desire to make about this matter?

Ans. I desire to say that no man nor no party of men offered to pay Mr. Duane's passage, or made any move to raising money to do it.

Mr. Cook. That I ask to have stricken out as contrary to the stipulation.

Mr. McAllister. Q. In reference to what occurred in the bay of Panama, as testified to by Christopher Dall?

Ans. I have tried to call that to mind, but I cannot remember one

323 word, or that he ever was aboard the ship or hung about the ship there. It may be true, but I cannot remember it. I cannot say.

Being cross-examined, said witness testified as follows:

Mr. Cook. About how long after you left Acapulco, about how many hours was it before you saw Duane or hear of his being on board?

Ans. I can't say; several.

Q. According to your best recollection?

Ans. That is my best recollection.

Q. Was it five or six?

Ans. I cannot say whether it was one, five, six, or eight, but my impression is that it was nearer eight than one.

Q. Do you know it was before or after breakfast?

Ans. I cannot tell whether I had been at breakfast or not.

Q. Did he not take breakfast at the first-cabin table?

324 Ans. No, sir; not to my knowledge or consent.

Q. But didn't he? I don't ask you as to your knowledge, but whether he did or not. Do you swear that he did not?

Ans. I don't swear to any such thing. I tell you not to my knowledge.

Q. Did you not see him at the first-cabin table after you had the conversation with him?

Ans. No, sir; I did not.

Q. Did you order him from the first to the second cabin table?

Q. I did not. I recollect of giving orders for him to eat at the second-cabin table.

Q. Will you swear that you never sent a glass of wine to him at the first-cabin table?

Ans. I never sent a glass of wine to him.

Q. Or friends with whom he was setting?

Ans. I don't know who his friends. I don't remember having sent wine to friends at the table. I might have done so. I am quite positive I

325 never sent wine to Duane.

Q. Will you swear that you did not send wine at the first-cabin table to friends of yours when he was setting with them to partake of it?

Ans. I don't think it was possible. I don't know. I can't say.

Q. Do you know whether he took his meals at the first or second cabin immediately after your interview with him the first day out?

Ans. Not to my knowledge.

Q. Do you know which place he did take them?

Ans. I do not. He did not eat at the first table to my knowledge.

Q. Who did you direct to tell Duane that he must go to the second-cabin table?

326 Ans. I don't know whether it was the purser or the steward. Some of the people under me. I don't know whom.

Q. You told Mr. Duane, in your interview with him, that you would send him back if you met the Sonora, because he was a stow-a-way, did you not?

Ans. I did.

Q. Did you give him any reason?

Ans. I might.

Q. Did you or did you not?

Ans. I don't remember. My recollection of that transaction is that there were very few words.

Q. Will you swear now that you did not state to Duane that you would send him back, for the reason that he was an exile from the vigilance committee?

Ans. I don't recollect any such conversation.

Q. Will you swear that you did not have such a conversation?

Ans. I won't swear to anything but what I know. I have no re-
327 collection of such conversation.

Q. Capt. Dall, your mate, testified that you told him, after you ascertained that Duane had taken lunch with him on board of the steamer at Panama, that you reprimanded him for it?

Ans. I told Mr. McAllister in your hearing that I had no recollection of that transaction.

Q. What was the real reason that you told Duane, as a matter of fact, what was the real reason that you had in your mind then, when you told Duane that you would send him back?

Ans. There was two reasons. One was that he had no ticket nor money, and was a stow-a-way, and the other was that if I took him up in all probability he would be hung.

328 Q. You knew that at the time you had the coversation?

Ans. I didn't know it, but it was my impression, and I did not know but I might get into trouble.

Q. How did you know it at that time, that he had been sent away by the committee?

Ans. I think we all knew it. I don't know whether I had heard it or read it.

Q. Did you know what the punishment was if they returned?

Ans. I think everybody knew that.

Q. Where did you get your information?

Ans. I can't tell whether I got it at Panama or Acapulco. These matters extended through some two or three months.

Q. Did you see it in any paper?

Ans. I might. I am not positive whether it was told me or whether I read it.

329 Q. Would you act upon the vague representation made by some third party to you and put a man off your steamer on such ground?

Ans. I would put a man off my steamer unless he had somebody to pay his passage.

Q. The question is, would you have put him off your ship if you had simply heard that he was an exile?

Ans. That depends upon circumstances.

Q. Would you under the circumstances operating on your mind at that time?

Ans. I cannot tell what I would have done at that time.

Q. Define what a stow-a-way is.

Ans. A man who comes aboard a ship and keeps himself out of sight until the ship gets to sea, and has no money to pay for a ticket, and knows it when he goes on board, is a stow-a-way.

330 Q. Do you know of your own knowledge that Duane secreted himself for one minute on board of that ship?

Ans. I cannot know everything aboard of the ship.

Q. Do you know of your own knowledge whether he did secrete himself?

Ans. It is my impression that he did keep himself out of sight until I got to sea, before he made himself known.

Q. Do you know of your own knowledge that Duane secreted himself for one minute, before you got to sea?

Ans. I did not go and hunt Duane or any other person, to see whether Duane or any other person was stowed away. How could I know that? I say I only know from my people who were under me.

331 Q. Did you see him secrete himself, or know of our own knowledge of his being secreted?

Ans. I have answered that question to the best of my ability.

Judge Field. You got your information from your officers?

Ans. Why, yes; Mr. Cook understands that.

Mr. Cook. Can you tell me what officer gave you the first information?

Ans. The purser; that is my recollection. If I had known any stow-a-way was on board I should not have gone to sea until I had found him, if it was possible to find him.

Q. Suppose that an hour after your ship left her mooring at Acapulco, you had gone to your office and found Mr. Duane there, and he had told you that he had not a ticket, would you have considered him a stow-a-way?

332 Ans. If he got aboard the ship without money, without a ticket, and he kept himself out of sight until we got to sea, I should.

Q. Would that be your definition of a stow-a-way?

Ans. It would. He should have come to the purser's office the moment he came to the ship, before we left the harbor.

Q. The purser's office was open before you left?

Ans. I presume so. My room was open. I was there. He did not apply to me.

Q. Did you give any officer or attache of your ship orders before you left Acapulco not to receive or take any person on board the ship who had been exiled by the vigilance committee?

Ans. I don't have any recollection of that; and yet I might, because I did not burden my mind with those things, for I never thought of it an hour

333 afterwards as to those points. I have got something else to do.

Q. If you had given an order of that kind, would not you have been very likely to remember it?

Ans. I don't know. It is a good many years ago, and I have passed through a good many scenes, and carried a great many passengers, and changed ships very often.

Q. Do you recollect every giving Schell, your purser, orders of that kind?

Ans. I don't recollect ever giving anybody such an order, although it is possible I might.

Q. Do you think your memory upon that subject would be as good as upon your interview and conversation with Duane, on the same day?

Ans. I think not; for when I saw Duane and took a good look at him I never forgot him.

Q. Why?

334 Ans. A conversation may be easily forgotten, but a person brought to you, as under some offence, if you please—for it was offence to do as he did—you would be likely to remember him and know him.

Q. Why can't you give the whole conversation between you and Duane, if you remember that one circumstance so minutely?

Ans. I can't tell exactly why.

Q. Will you now testify positively that Duane did not say to you, that he would take the responsibility and the chances of being hung by the vigilance committee?

Ans. I don't remember of his ever having made any such statement.

Q. But that is not the question. Will you swear positively that he did not make any such statement?

Ans. I have done all the swearing that I expect to do here to-day.

335 I can tell you what I remember, and that is all.

Q. I want to know if you will say positive that you do not recollect. That is all.

Ans. I hope that the gentlemen present will believe what I state is true. Not for the verdict that might be given against me would I state an untruth.

Q. Would you entirely, irrespective of the fact that you had heard from some source or other that he was an exile of the vigilance committee, have put him on board the Sonora and sent him back as being a stow-a-way?

Ans. I cannot tell you whether I would or not. At that time I thought differently on a great many subjects, from what I might think now.

Q. I want to know what you would have done then.

336 Ans. Well, I can't say what I would have done. I only told you what I did do, and what prompted me to do it.

Q. You stated that when you got on board after Duane was sent to the Sonora, you heard that he had resisted.

Ans. I did not make any such statement, that I recollect. When I got on board they told me the general circumstances.

Q. Did they tell you that he was opposed to going and refused to go?

Ans. Of course he was opposed to going, and they told me the circumstances.

Q. Didn't they tell you that he actually refused to go?

Ans. But he did go, on his own feet. They said he kicked up a row; that was the sailor's expression, or officer's; didn't want to go, but finally after a little persuasion he went.

337 Q. Why did you in your answer to the libel in this case swear that he went freely and voluntarily, and of his own accord?

Ans. He did so far as I know. I mean by that that they didn't pick him up and carry him out. I don't think it would have made any difference if they had.

Q. Do you say that no liquor was sold on board of that ship by the glass?

Ans. Liquor was not sold on board of that ship by the glass. I wish you to understand me that no bar was aboard the ship at that time. There is now. Wine was sold to them, and issued to them by their cards.

Q. One reason why you did not wish to bring him to San Francisco

338 was that you might possibly get into difficulty?

Ans. I think I might have been under that apprehension. I wished to avoid all those things.

Q. You did not know but the vigilance committee might seize you?

Ans. No; I wanted to put down, to allay difficulty, not to promote it.

Q. What do you mean by "difficulty" when you say you wished to avoid difficulty yourself?

Ans. I knew there was difficulty here; a serious difficulty.

Q. Did you belong to the first vigilance committee here?

Ans. Never belonged to any.

Q. Sympathise with them?

Ans. That is my business. I don't know what I did, or whether I did or not.

339 Q. Did you sympathise with the vigilance committee of 1856?

Ans. Plying my occupation down the coast, how could I keep the run of things here and sympathise with them? I think Mr. Duane himself will believe I had no malice towards him.

Q. Will you state that you did not say to Duane that if he came to San Francisco in your ship, you would not land a passenger until you informed the vigilance committee that he was on board?

Ans. I don't have any recollection of any conversation of that kind. I did not go into the particulars with Duane. There was no occasion for my going into particulars with him. I don't go into particulars with stow-a-ways anyway.

Q. Did you tell Judge McAllister, in your interview with him, that you would not bring Duane back for the reason that he had been exiled?

340 Ans. If I recollect right, the conversation was about this: Says he, Capt. Pearson, I have not got the money by me, but some of us will be responsible for the payment."

Q. I ask you if you did not say to Judge McAllister, in your interview with him that you would not bring Mr. Duane back to San Francisco, for the reason that he had been exiled by the vigilance committee, and sent off on one of the steamers belonging to that line?

Ans. I don't think that was the substance of our conversation.

Q. Did you state anything to that effect to him?

Ans. It is several years ago, and as I have told you, I cannot remember and repeat conversations. No man can do it.

Mr. McAllister. I offer the record in this case of Gallagher, for the

341 purpose of showing the date when that action was commenced. Also the judgment read in the case of Duane *vs.* Watkins, to show so far as it can show that the party has recovered for this tort; which said judgment record was put in evidence and is inserted in the "State."

(Objected to as irrelevant.)

Appellant rests.

342 Charles P. Duane, the appellee, being duly sworn, testified as follows:

Mr. Cook. Did you hear the testimony of Mr. Hewett this morning?

Ans. Yes, sir.

Q. Was he at the gangway, or did you see him when you went on board of that ship?

Ans. He was not at the gangway, but I saw him before the ship sailed, and shook hands with him.

Q. Who was at the gangway when you went on board that ship?

Ans. I don't know the man's name. He was a thick-set man that I used to meet here very often. He occupied the position at the gangplank.

Q. Watching the gangplank?

343 Ans. Yes, sir. As I was going up he reached his hands and said "Why, Charley, how are you?" and we conversed a little while, and we took a drink together, and I related to him the circumstances of the case, &c.

Q. Did you state to Mr. Hewett that your ticket was in your carpet sack on board the ship?

Ans. Oh, no, sir. Mr. Hewett knew me very well; knew that I was not a passenger.

Q. You stated nothing of that kind?

Ans. No, sir; I am positive of that. I was astonished to hear him swear to it.

Q. Was it daybreak or was it not at the time you went on board of that ship?

Ans. It was after daylight.

344 Q. How long had the ship been in before you went on board of her?

Ans. I should judge an hour and a half or two hours. Probably more.

Q. How long after you went on board of her before she sailed or steamed up?

Ans. About two hours and a half, I should judge, or three hours.

Q. After you got on?

Ans. Yes, sir.

Q. Did you have breakfast before she sailed?

Ans. Yes.

Q. Did you take breakfast at the first-cabin table?

Ans. Yes. I had breakfast with the steward at the first-cabin table. There was not a general breakfast given. There was a breakfast got up by myself and others.

Q. Had you seen the purser before you took that breakfast?

345 Ans. Yes, sir.

Q. How long before?

Ans. I do not recollect how long before. As soon as I found his office and found him I went to him and stated the facts of the case, and stated how I was situated; had no money or means, but had Judge McAllister and other men to pay my passage. Mr. Scott, formerly county treasurer here, came to me and tendered money to pay my passage, and I told him I would rather not receive it, and I had rather Judge McAllister would pay for me. I conversed with Judge McAllister there on the ship some time about his son Hall—his son Cutler was with him then—about his son Hall being on guard of the jail with me, and about those things.

346 Q. Then you saw the purser and was around publicly on the ships before she sailed?

Ans. I was publicly aboard. They was all aware of that.

Q. Did you secrete yourself in any part of that ship for the purpose of avoiding being seen?

Ans. I did not until they wanted to take me off.

Q. Until you were about leaving for the Sonora?

Ans. I did not, sir.

Appellee rests.

It is hereby stipulated and agreed that whenever objections appear in within statement of the case to any testimony set forth therein the party making such objections did then and there only object and expect to the ruling and decision of the court overruling such objection.

It is hereby further stipulated and agreed that the foregoing contains a full and correct statement of all the additional testimony taken in the

347 circuit court upon appeal. It is also stipulated that this record need not be filed in the U. S. Supreme Court at the December term, 1864, but that it shall be filed in time to be argued at the next succeeding term of said Supreme Court.

Dated Nov. 2d, 1864.

E. COOK, *Proctor for Appellee.*
H. & C. McALLISTER, *Proctor for Appellant.*

The foregoing statement and stipulation are correct
Nov. 2d, 1864.

STEPHEN J. FIELD, *Circuit Judge.*

Clerk's certificate.

348 In the circuit court of the United States in and for the northern district of California, June term, 1864, in admiralty.

CHARLES P. DUANE
vs.
ROB'T H. PEARSON.

I, George C. Gorham, clerk of the circuit court of the United States in and for the northern district of California, do hereby certify that the foregoing 347 pages contain a full, correct, and faithful transcript of the record of the proceedings in the above-entitled cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the court-house, in the city of San Francisco, this 31st of October, A. D. 1864, and of the independence of the United States the eighty-ninth.

[SEAL.]

GEO. C. GORHAM,
Clerk U. S. Circuit Court, Nor. Dis't California.

Filed December 22, 1864.

In the United States district court in and for the northern district of California.

CHAS. P. DUANE
vs.
ROBERT H. PIERSON. } No. 142.

It is hereby stipulated that the testimony of M. H. McAllister would testify as follows in this case, and the following shall be considered with the same force and effect as if said McAllister had testified to such facts, upon the hearing thereof, to wit:

That said M. H. McAllister was a passenger on board the steamship "John L. Stevens," on the voyage referred to in the libel in above-entitled action. That a day or two after libellant came on board at Acapulco, said McAllister stated to the purser of said steamship that he would pay libellant's passage from Acapulco to San Francisco, which offer was not accepted by said purser.

Also that McAllister had with him means sufficient to pay such passage money.

HALL McALLISTER, *for Def't.*

Dated Oct. 22d, 1863.

Indorsed: Exhibit "A," O. H., filed June 21, 1864.

HENRY C. HYDE, *Clerk.*

Indorsed: U. S. district court, Chas. P. Duane *vs.* Rob't H. Pierson.—Stipulation as to deposition of M. H. McAllister, esq.—Exhibit "A," O. H.

Filed June 21, 1864.

HENRY C. HYDE, *Clerk.*

CLERK'S OFFICE, U. S. CIRCUIT COURT,
NORTHERN DISTRICT OF CALIFORNIA:

I certify that the foregoing is a true transcript of a stipulation on file in my office, and forms a part of the record in the case of Robert Pearson, appellant, *ads.* Charles P. Duane, respondent. And that the said stipulation was inadvertently omitted from the transcript of the record in said cause, on the appeal to the Supreme Court of the United States.

Witness my hand and the seal of said circuit court, this 8th day of June, 1866.

[SEAL.]

GEO. C. GORHAM,
Clerk U. S. Cir. Court, Nor. Dist. Cal'a.

[5-ct. rev. stamp, cancelled.]

Supreme Court of the United States.

ROBERT H. PEARSON, appellant,
vs.
CHARLES P. DUANE, respondent. }

It is hereby stipulated that the foregoing copy of stipulation be annexed to and form a part of the transcript of the record in the above cause.

San Francisco, May 28, 1866.

HALL McALLISTER, *Att'y for Defendant.*

SUPREME COURT

OF THE UNITED STATES.

ROBERT H. PEARSON,

Appellant,

against

CHARLES P. DUANE.

Statement of Facts and Points of Appellant.

ALEX. HAMILTON, JR.,

Attorney.

NEW-YORK:

HENRY TOMPKINS, STATIONER AND PRINTER,

29 CEDAR STREET, BET. WILLIAM AND PEARL STREETS.

1866.

Supreme Court,

OF THE UNITED STATES.

ROBERT H. PEARSON,
Appellant,

vs.

CHARLES P. DUANE,

Statement of Facts and Points of Appellant.

This action was tried in the District Court for the Northern District of California, in August, 1862, before the Hon. Ogden Hoffman.

The plaintiff below claimed to recover damages from the defendant, who was Master of the steamship "John L. Stephens," for refusing to convey him as a passenger to the City of San Francisco, from Acapulco, in the month of June, 1856; and for forcibly and against his will putting him on board the steamer "Sonora," then on her way to Panama.

Judgment was rendered against the defendant for $4,000, with costs, which was affirmed on appeal to the Circuit Court of the United States, for the Northern District of California.

The following is a brief statement of the principal facts in the case:

In May or June, 1856, the libellant was sentenced to banishment from the City of San Francisco, by a powerful and organized body of men, called the "Vigilance Committee of San Francisco," upon penalty of death in case of his return. On the 5th of that month, he was put on board the steamer "Golden Age," at San Francisco, forcibly and against his will, by order of the Committee. The steamer was bound for Panama, but stopped at Acapulco, where the libellant left the ship. On the 23d of the same month, the steamer "John L. Stephens," of which the defendant was master, called at Acapulco, on her way from Panama to San Francisco. The libellant came on board without a ticket, or money to buy one, and without the knowledge of the defendant. After the ship had left Acapulco and had got to sea, he was discovered by some of the officers who had been informed at Acapulco of the proceedings of the Vigilance Committee and of the banishment of the libellant. Thereupon defendant informed the libellant that he should put him on the first down ship he met. The libellant, however, persisted in his desire to return to San Francisco.

Two or three days thereafter, the steamer "Sonora," of the same line, from San Francisco for Panama, was spoken. The defendant went on board the "Sonora," leaving the libellant on board the "John L. Stephens," and had an interview with the master of the "Sonora," by whom he was informed that he had orders not to bring any of the exiles back, and that the libellant would certainly be hung if taken to San Francisco. Thereupon the defendant sent the boat to the "Stephens," with orders to bring the libellant to the "Sonora," which was done against the will and remonstrance of the libellant.

To recover the damages consequent upon this act, this libel was filed.

The case contains a stipulation, "admitting that Judge "McAllister offered to pay the fare of Duane to the Pur"ser, and had means of doing so; and it was refused."

On the trial, evidence was offered and admitted, showing that no offer to pay the fare had been made; but

that Judge McAllister said that he and some others would become responsible for it ; which was declined by the defendant.

Exceptions were filed to the libel, which were overruled *pro forma*, saving to the defendant the benefit of the exceptions at the hearing.

The answer and amended answer, insist upon the exceptions ; and, at folio 118 of the amended Answer, it is averred, that at the time the defendant discovered the libellant on board the "John L. Stephens," he had been informed of the banishment of the libellant by the Vigilance Committee, and that the penalty affixed by the Committee to the return of the libellant to San Francisco was death. "That influenced by humane motives, and "fully believing said Vigilance Committee had both the "will and power to execute such threatened penalty," he stated to said libellant that if he, said libellant, should return to San Francisco in said "J. L. Stephens," he would certainly be hung, and strongly advised libellant against said return.

At folio 122, the answer states, after reciting the information which the defendant had received from the Captain of the "Sonora," "that thereupon this defendant, "regarding the libellant as a stowaway, &c., &c., and in-"fluenced by the humane, just, and, perhaps, excusable "motive of saving libellant's life, ordered his removal "from said "John L. Stephens" to the said "Sonora."

The allegations in the libel not put in issue, and the proofs, establish the following propositions of fact :

First. That the Vigilance Committee in question was a powerful organization, having both the will and power to execute its sentences.

Second. That the libellant was banished by the Committee, with the penalty of death under in case of his return to San Francisco, and that the defendant was informed of such banishment and penalty before the libellant was transferred from the "John L. Stephens" to the Sonora.

Third. That two persons sentenced by the Committee had been publicly executed in San Francisco before the departure of the libellant, and that both the libellant and defendant knew of this fact before the libellant was transferred to the "Sonora."

Fourth. That the defendant did not take the libellant with him to the "Sonora," or order him there, till after his interview with the master of the "Sonora," who was direct from San Francisco, by whom he was informed that the libellant would be hung if he returned to San Francisco,—thus confirming the opinion already held by him on that subject; and upon which information he finally decided to transfer the libellant to the "Sonora."

Fifth. That if the libellant had returned to San Francisco, on the "Stephens" he would have been executed by the Vigilance Committee.

Sixth. That upon the arrival of the "Stephens," at San Francisco, she would have been visited by the Committee before the landing of the passengers would have been permitted, and if the libellant had been on board, he would have been forcibly taken from the ship while crowded with passengers, some of whom from association or otherwise sympathised with the libellant.

Seventh. That the libellant was well and publicly known in California as a turbulent, bad man; characterized by one of the two witnesses he called to prove his good character, as "ready for a fight," and by the other as "a very wild young man, getting into fights, whom. "he had heard, had shot a Frenchman."

To establish the above propositions of fact, the following abstract of the pleadings and proofs is presented.

In that part of the libel not put in issue by the answer, the libellant states; that on the 5th of June, 1856, he was forcibly abducted, without warrant of law, and carried out of the State of California, in the steamship "Golden Age," to the port of Acapulco in Mexico, at

which place he succeeded in regaining his liberty ; that on the 23rd of said month, the steamship "John L. Stephens," commanded by the defendant, arrived at Acapulco, and resumed her voyage after a stay of about twelve hours ; that the said "Stephens" was a passenger vessel, employed according to the usual custom of common carriers ; that on that day the libellant went on board of the "Stephens," and she departed for San Francisco with him on board.

That after the ship left Acapulco, Pearson sent for libellant and told him that since leaving Acapulco, he had discovered by means of the newspapers, that libellant had been banished by the Vigilance Committee of San Francisco.

That Pearson then stated, that if they should meet the Sonora on her way to Panama, he should put the libellant on board of her, against which the libellant protested.

That on the evening of the 26th of June, 1856, the respondent caused the libellant to be put on board the Sonora, forcibly against his will and protest.

That the Vigilance Committee was composed of a large body of persons armed and organized in open rebellion to the constitution, laws and legally constituted authorities of the City of San Francisco, the State of California and the United States ; that in said month of June, this Committee had, without color or warrant of law, caused the libellant to be exiled from the State of California, and sent to Panama, several thousand miles distant from his home and country.

"*That said Committee affixed the penalty of death upon "libellant should he ever return to the State of Califor-"nia.*" (Folio 7.)

"That this Committee were, being so organized as "aforesaid, bound together by oaths and obligations, "respectively taken and assumed by them, among other "things, to *obey and carry out* the rules, regulations, and "edicts, intentions, designs, *sentences*, and *punishments* "made and promulgated by said body, and were so com-

'bined, associated and confederated, as that in the per-
"petration of unlawful acts by them respectively assumed,
"full indemnity and security was extended both in per-
"son and property." "That when libellant was so ban-
"ished from California, he was threatened *with the pen-*
"*alty of death should he ever return to said State.*" *That libellant was aware that said Committee had caused to be executed a number of persons, without color or warrant of law, and had the power to put their threats into execution, and had reason to believe* from the conduct of said R. H. Pearson, *and the treatment he received from the hands of said Vigilance Committee, and their threats as aforesaid, which were well known to said Pearson, that should he return to said State, his return, if successful, would be, impeded, and his life put in peril and jeopardy.*

These are the libellant's own statements in his libel, and are admitted in the answer

Upon the trial, he gave his version of his transfer to the Sonora, and what he did subsequently; after which, it was hardly necessary for him to call witnesses to prove that he was always ready for a fight. He says, the steamer was stopped; saw all hands searching—after a while one of the men came and pulled the door open, he shouted, Here he is; I got out of the window, drew myself along the promenade deck; remained there half an hour; finally hoisted the boat up; I jumped out; they rushed for me, about sixty or seventy were looking for me; I had a knife which a passenger lent me; I drew it, and said, I was ready to defend myself. Some 50 or 100 rushed to my rescue, came between me and the party seaching for me, and I got through the crowd; on the promenade deck I met Cutler McAllister, who advised me not to resist; they were determined to take me; the parties in pursuit came up again; the first mate was in charge; I drew my knife again determined to defend myself; the first mate said, "Charley it isn't my wish, but the Captain says I must do it." I said the Captain had no authority to seize me and put me off the steamer; that he, the mate was hired to do other work than that; that if he touched me I would certainly kill him;" I backed up so they

couldn't get behind me; the passengers appeared to arm themselves, and said, they, (meaning the crew) must not interfere with me; told me not to be afraid, they would defend me; *I had to plead very hard to stop them; told them I did not wish a mutiny on board on my account;* saw the mate cocking his pistol; said, "shoot, you can't intimidate me;" the passengers said put up your pistol; I think he put it up; I remained in this position some 15 or 20 minutes; they couldn't get near me; I had made up my mind not to go living—allowed no one to get nearer me than they were—about eight feet—neither as a friend or in any other way. Judge McAllister came through the crowd, he said, "Duane put your knife away; don't cut anybody or the Captain will hang you at the yard arm, as he has done so before;" said he, I don't advise you to go, but don't cut anybody; I knew he was a friend—I took his advice, put my knife away, and cried like a child; I couldn't help it; they came and dragged me away to the side of the ship."

It is true that this is almost entirely a romance, but the libellant himself describes the manner of man he is.

He then says, that when he reached Panama in the "Sonora," Captain Whiting sent for him to notify him that the Governor had notified him not to land Charles Duane, unless he went right through on the cars. * * * "I asked Whiting what I should do; whether he would "take me back. He said he was told not to bring me "back before he left San Francisco. I again asked his "advice. He recommended me to go right across and go on to New-York. * * * I went to the hotel. I was arrested by five military officers, under suspicion that I was coming down to take the city, and that my being sent away by the Vigilance Committee was a ruse. I invited them to take a glass of wine; they got drunk, and left me. * * * I remained at the hotel about five days. I was turned out as a bad man, and sent away by the Vigilance Committee. * * * * Finally, I crossed to Aspinwall, delivered my letter, and the Captain refused to take me. I informed him of my condition: that they would not take me on the other

side, and I had no means to live on the Isthmus. He refused. I offered to pay him when I got to New-York. I told him he had no heart, and that I could not live on the Isthmus, and that the place was not big enough *for us both to live in.* He sent after me, telling me he had concluded to take me. I went aboard; stayed there about an hour. The Agent came on board, saying there were twelve or fourteen of the passengers who wouldn't travel with me, and I must go ashore. I told him I had no means to live on shore. I was in my stateroom, and determined to go. He got the firemen and coal-heavers, (about twenty men,) to put me out. *I drew my knife, and told them the first man who came in I would kill.* They might take me dead, but not alive." (Fols. 76, 77.)

Upon his cross-examination, he testified that the Vigilance Committee had hung two men before he left, and that he was told that *if he ever returned, it was under the penalty of death.* "*This sentence was in writing, and read to me.*" (Fol. 83.)

The defendant proved, by a member of the Vigilance Committee, (folio 88,) that all sentences were recorded, and that Duane was banished, not to return under the severest penalty. That on a rumor that Duane had returned, a large number of men were sent to arrest him. That the Committee had 4, 5 or 6 thousand men, well enrolled, with cannon and arms; that a general order was issued to have a force detailed on the arrival of vessels, and to see that no exiles returned; and if so, to seize them. This organization continued through *June and July*, 1856, and seven days is the time from Acapulco to San Francisco. This witness testified that, "from the tone of feeling among the masses composing "the Committee, I really believe that any one of the ex-"iles who had returned would have been executed very "summarily." (Fol. 90.) "Four men were executed "by the Committee; two before Duane left, and two "after."

"At the time he was sent away, I considered his reputation very bad, and so was considered by all respectable

people. He was a turbulent man, and went armed; for an imaginary offence or insult, he would draw and shoot. He was connected with a corrupt set of politicians, and being a rather weak man, could be induced, under the influence of liquor, to commit gross acts of violence. His reputation was very high in the science of pugilism."

Isaac N. Bluxome, who was Secretary of the Vigilance Committee, testified that Captain Pearson was not a member, to his knowledge, and never heard of his being one. He said: "We watched all the steamers till the death penalty was taken off. I think the Committee disbanded about *four months* after their organization."

The Purser testified, that they heard of the proceedings of the Vigilance Committee at Acapulco.

J. L. Smiley, also a member of the executive committee of the Vigilance Committee, testified that the Committee closed their active organization, and withdrew the penalties they had annexed to parties they had sent away on the 16th of October, 1856. This was published in the public journals. There was always a band of men assembled in the month of July, 1856, ready to search for any exiles upon every steamer being telegraphed. "I think Duane would have been hung had he returned in July, 1856. Think he would have been taken out of the steamer, even if he had not landed."

Captain Pearson was sworn and testified, that he never was a member of the Vigilance Committee. That he had a conversation with Duane when he first learned that he was on the ship, and told Duane he should put him on board the first down ship he met. He thought it was dangerous for him to return, and thinks he had orders from the Company not to bring him back. That he went on board the "Sonora" to see Capt. Whiting, who told him not to take Duane up by any means; *that they would certainly hang him, and that they had orders not to bring any of them back.*

He says: "I sent him aboard of the "Sonora" to save his life; for I really believed from what Capt. Whiting told me that they would hang him." It was after this

information that the orders were given to bring the libellant to the "Sonora."

On his cross-examination, he was asked what was the reason that he told Duane he would send him back?

A. There were two reasons: one was that he had no ticket or money, and was a stowaway; and the other was, that if I took him up, in all probability he would be hung.

* * * Q. You did not know but the Vigilance Committee might seize you?

A. No; I wanted to put down—to allay—difficulty; not to promote it.

Q. What do you mean by "difficulty," when you say you wish to avoid difficulty yourself?

A. I knew there was difficulty; very serious difficulty.

These proofs, and the undisputed allegation in the libel, fully establish the propositions of fact as heretofore claimed; and upon them the appellant submits the following points.

POINTS.

FIRST POINT.—The facts disclosed in the libel, and not put in issue, justified the defendant in refusing to carry the libellant into the port of San Francisco, where, as stated in the libel, the Committee who banished the libellant "had affixed the penalty of "death upon libellant should he ever return to "the State of California." (Folio 7.) "That said "Committee had power and ability to put in ex-"ecution their threats, (folio 11;) and that libel-"lant believed * * * that should he return "to said State, his return, if attempted or success-"ful, would be impeded and resisted, and his life "put in peril and jeopardy," &c., &c.

There is no rule of law governing common carriers, which compels them to carry a passenger when there is good reason to believe that such carriage will lead to a breach of the peace, much less where the fact is conceded that it will lead to the crime of murder.

On the contrary, not only the rules of law, but of public policy, make it incumbent on the carrier, under such circumstances, to refuse to carry such passenger.

SECOND.—The facts disclosed show that the libellant would have been seized and hanged had he gone to San Francisco on the "John L. Stephens," and that the defendant knew that such would have been the result had he carried him to that port. The defendant owed a higher duty to the preservation of the public peace as a citizen, than he did to the libellant as a carrier. It was not only his right, but his duty to refuse to return the libellant to the hands of the Vigilance Committee.

The condition of affairs in San Francisco in July, 1856, is now a matter of public history. It was an organized rule of anarchy, irresistible from its proportions, and unyielding in the execution of its purposes.

It was submitted to, if not created by, a body of men otherwise law-abiding citizens, and was formed to correct an evil which the law could not or did not reach. It judged with dispassionate deliberation, but executed its judgments with inflexible certainty. The defendant could not ignore the existence of this power, nor defy its edicts, because they emanated from an unlawful source. His duty, in common with every other citizen, was to abstain from participating in any-

thing which this tribunal had pronounced against until the supremacy of the law should be re-established. To have taken back an obnoxious exile, would have been a wicked and foolish challenge to the Committee, which they would have answered by hanging the victim, under a sentence already pronounced.

To sustain a recovery under such a state of facts for the refusal of the defendant to carry this exile to the gallows, is to ignore the principles on which the common law is founded, as well as the sterner requirements of a still higher code.

THIRD.—The defendant was justified in transfering the libellant to the "Sonora," even had he not reason to suppose that he would have been hanged by the Committee.

He had reason to believe, that he would have been taken out of his ship by violence, and from the character of some of his passengers, and particularly that of the libellant, that a breach of the peace dangerous to the safety of his passengers and the property of his employers would have ensued. To avoid the reasonable probability of this result he had the legal right to refuse the libellant as a passenger.

FOURTH.— Taking into the view the circumstances under which the libellant came on board the steamer "J. L. Stephens," at Acapulco, the defendant was justified in transferring him to the "Sonora" then on her way to Acapulco—because of his notorious turbulence of character, offensive habits and violent disposition.

FIFTH.—The duty which the defendant owed to the owners of the ship, made the refusal to carry the libellant to San Francisco, justifiable if such carriage was calculated to injure the business of the ship as common carriers.

To bring back to San Francisco those persons who had been adjudged too vile in character to reside there, was calculated to injure the business of the line ; nor does the unlawful character of the sentence affect the duty of the master of the ship in this respect.

Thousands of persons participated in the action of the Committee, and as many more sympathized with them, and these formed a very considerable part of those who patronized the line of steamers of which the " J. L. Stephens " was one.

In support of these propositions the following general rules as taken from the books, and citations of authority are submited.

The first and most general obligation on the part of the public carriers of passengers is to carry persons who apply for passage ; it is nevertheless true that the obligation is subject to qualifications :

A. That the regular fare be tendered, or that there be an offer to pay it.

B. That there be sufficient room.

C. That freshets in a river do not render it impracticable or dangerous to cross a ferry.

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A. That the regular fare be tendered, or that there be an offer to pay it.

B. That there be sufficient room.

C. That freshets in a river do not render it impracticable or dangerous to cross a ferry.

D. That the applicant is not an unfit person to be received as a passenger.

E. That he had no design to injure the business of the carrier.

F. That such carriage will not expose the carriers property to extraordinary danger or popular rage, or lead to a breach of the peace.

All these exceptions have been held.

In Story on Bailments, § 591, n., this passage occurs; "But although passenger carriers are "thus bound to carry passengers, the duties of "the former as well as the rights of the latter, "have certain prescribed limits and implied quali- "fications.

He then quotes in illustration of this from the opinion in Jencks *vs.* Coleman, 2d Sumner, 206, as follows: "The right of passengers to a passage "is not an unlimited right; but is subject to such "reasonable regulations as the proprietor may "prescribe for the due accommodation of passen- "gers, and for the due arrangement of their busi- "ness. The proprietors have not only this right "but the further right to *consult and provide for* "*their own interests* in the management of such "boats as a common incident to their right of "property."

"They are not bound to admit passengers on board, who refuse to obey the reasonable regulations of the boat, or who are guilty of gross and vulgar habits of conduct, or who make disturbance on board, *or whose characters are doubtful, or dissolute or suspicious, and a fortiori whose characters are unequivocally bad*, nor are they bound to admit passengers on board, whose object it is to interfere with the interest or patronage of the proprietors so as to make the business less lucrative to them. While therefore I agree, that steamboat propretors holding themselves out as common carriers are bound to receive passengers on board under ordinary circumstances, I at the same time insist that they may refuse to receive them if *there be a "reasonable objection."*

Speaking of the intent and motives of a passenger in taking passage, the learned Justice says:

"It has been said that the proprietors had a right to enquire into the intent, and motives and to act upon the reasonable presumptions which arose in regard to them. Suppose a known or suspected thief were to come on board, would they not have a right to refuse him a passage? Might they not justly act upon the presumption *that his object was unlawful;* suppose a person was to come on board who was habitually drunk and gross in his behavior and obscene in language, so as to be a public annoyance; might not the proprietors refuse him a passage? I think they might upon the just presumption of what his conduct would be."

It is to be remarked of this case, that Mr. Webster, who tried the case for the plaintiff, made no exception to any of the propositions involved in this part of the charge.

His only request to charge *other than as above*, was upon another point.

The case is reported as follows: "Webster, for the plaintiff, then requested the Court to charge that the jury be satisfied, that this *agreement*, (referring to an agreement to carry passengers to one line, there being an opposition route,) was necessary, or clearly expedient for the public interest, and the interest of the proprietors of the boat, or otherwise the Captain of the boat could not enforce it, by refusing the plaintiff a passage or that the defendant, that the substantial interest of the proprietors or of the public required an arrangement such as they entered into, in order to justify their refusal to carry the plaintiff for the cause assigned."

In Cook *vs.* Gourdon, 2d Nott and McCord, at page 22, Mr. Justice Bay, in delivering the opinion of the Court, speaking of the rights and liabilities

of ferrymen, says: "In fact the law gives him the "right of judging when it is safe and proper for "him to cross or not."

In the case of Bennet *against* Dalton, 10th New Hampshire, 486, Chief Justice Parker, says: "We are of opinion, that the proprietors of a stage-coach for the regular transportation of passengers for hire, are bound to take all passengers who come, so long as they have convenient accomodation for their safe carriage, *unless there is a sufficient excuse for them for a refusal*," and quotes Jencks *vs.* Coleman, 2d Sumner.

(This was a case where the defendant had ageed with another line of stages not to receive passengers on a certain day, unless they came by his coach. The Court held this not a sufficient ground for refusal.)

Like innkeepers, carriers of passengers are not bound to receive all comers.

8th New Hampshire, 523.
Maikam *vs.* Brown.

"*The character of the applicant*, or his condition at the time, may furnish just grounds for his exclusion, and his object at the time may furnish a sufficient excuse for a refusal, as if it be to commit an assault upon another passenger or to injure the business of the proprietor."

The fact that the libellant was willing and desirous to return to San Francisco, makes no difference as to the defendant's duty. His conduct in acting like a fool or a madman did not justify the master of the ship in imitating it.

The value or worthlessness of the libellant's life is not involved in the question.

The crime of murder, or any lesser breach of the peace, is an offence against body politic; in any measures taken to [illegible] the civil rights of in-

dividuals are subordinate to the requirements of a public duty. This principle is carried much further. Where the interest of a community is at stake the individual interest must succumb, as in case of a conflagration the house of an individual may be destroyed to save the greater interest of the public.

An agent of a railway would be justified in refusing to sell a ticket to a pugilist on his way to participate in a prize fight, as would the conductor of a train in putting him off before reaching the place where the fight is to take place. Will it be claimed that a disappointed prize fighter could recover damages against the carrier for thus averting a flagrant breach of the peace? The case before the Court is much stronger against a recovery.

If a carrier has reason to suppose that a passenger is engaged in canvassing for another line, the law excuses him for refusing to carry the passenger, or if he is of dissolute habits and not a fit companion for other passengers, he may be excluded; how much more is the carrier justified in excluding a person, who at the end of the route (as both parties admit in their pleadings in this action,) they well knew would "meet with death at the hands of an armed and organized body of men in open rebellion against the constituted authorities."

Angell on Carriers, section 525.

Questions affecting the carriage of persons are comparatively of modern date, the first case coming under the notice of the Court being in 1791, before Lord Kenyon. The treatment of these questions has established a distinction in the liability of carriers of goods and of passengers. The former are responsible for all losses except

from the act of God, and the public enemy, while the latter are only responsible for the want of due care, diligence and skill.

Notwithstanding the greater stringency in the rule as applied to carrier of goods, yet it has been held that he may refuse them for the following reasons among others :

1. Want of room.

   2 Shower, R. 127.

2. If he have no convenient means of carrying the goods offered *with security*, or because they are not of the kind he is accustomed to carry, or because they are brought at unreasonable time.

3. If the goods offered are of a nature which will at the time expose them *to extraordinary danger or popular rage.*

   Edwards *vs.* Shellatt, 1 East. 604.
   Angell on Carriers, § 125.

If this apply to property, how much more should it apply to persons ?

Edwards *vs.* Shellat was a case where the plaintiff had a lot of wheat at Wolverhampton to be sent to Birmingham. There was a great disposition to riot manifested in the neighborhood, on account of the prevailing scarcity. The mob had pulled down a corn mill not far distant, and it was understood that they had threatened to come to the warehouse where this corn was deposited. The defendant was a common carrier, by water, between Birmingham and Wolverhampton, and on to Radford. The plaintiff's agents, finding one of the defendant's boats going by, without any intention of staying at Wolverhampton, or seeking to take in goods there, stopped the boat and pre-

vailed upon the boatman to take in the corn, which was seized by the rioters at a distance of four or five miles from Wolverhampton.

The defendant had a verdict, and opinions in King's Bench were delivered by Lord Kenyon and Barons Gross, Lawrence and Le Blanc. As bearing upon the question involved in this case, Lord Kenyon said: "All the circumstances and "urgency of the case should have been disclosed "to the boatman at the time, and he should have "been asked whether he chose to undertake the "risk. Common honesty would have suggested "this; for *no man in his senses would, under these "circumstances have taken the corn under a liability "as common carrier.*"

That is, there being a disposition to riot in the neighborhood, and a reasonable probability that the corn would be seized by the rioters in case it was taken on board the boat, the boatman would have been justified in acting upon the belief, and in refusing to take the corn. Nay, more—"No man in his senses would have taken it under such circumstances."

Suppose, instead of corn, a passenger, whose life had been threatened by the rioters, had offered himself, and the boatman, knowing of the threat, had refused to have taken him. What would have been said of the carrier's "senses" if he had taken the passenger under such circumstances.

Baron Gross says, in the same case: "What "are the facts. A boatman in the night * * * "is induced to take goods on board *under such cir-"cumstances as if the defendant had been apprized of "them*, it is clear that he would not have contract-"ed to receive them as a common carrier."

Almost all legal propositions which are true

in the abstract have their exceptions in applying them, and the elasticity of the common law in accommodating itself to the changing circumstances of a progressive civilization, has always been held as one of its highest claims to admiration.

Perhaps no feature of the common law is more conspicuous than the tenacity with which it has maintained the sacredness of a man's person.

An assault in which the person is not touched, is defined to be "an attempt to commit *a forcible crime* against the person of another;" and a battery includes a beating and wounding. Yet this rule is subject to its exceptions in favor of the public peace, the upholding of the process of the law, or the preservation of order in judicial proceedings, without commitment.

In an indictment for an assault and battery, the defendant may justify laying his hands upon another *to prevent him from fighting or committing a breach of the peace.* (Com. Dig. Pleadings, 3 M., 16;) or to *prevent him rescuing goods taken in execution,* (3 Lev., 113;) or the like, (1 Mod., 168.) A coroner or magistrate, upon a preliminary enquiry, may justify a *forcible* exclusion of a person from the room, even though he be the Attorney for the party accused.

Archbold's Crim. Law. 347.

"A man may justify an assault and battery in "preventing the commission of a felony *or a breach* "*of the peace, or the suppression of a riot.*"

Roscoe's Criminal Evidence. 213.

Had the defendant been indicted for an assault and battery, under these cases, he had a good defence. Certainly so in a civil action for an assault and battery. No good reason can be assigned why he is not equally defensible upon these principles in the present action. This rule has been applied to the protection of common carriers, also in this country.

Commonwealth vs. Hall, 7 Metcalf, 596.

A depot master of the Western R. R. was indicted for an assault and battery for forcibly ejecting one Power from the station-house.

It was not claimed that he used more force than was necessary. The defendant believed he came there to solicit custom for his house, against the regulations of the company. Power had a ticket for the next station in his pocket, and was really going to take his passage. Chief Justice Shaw says: "If it be insisted that by opening the door of these depots, the company give an implied licence to any and all persons to enter, it may be answered, that by thus opening their doors they do *prima facie* give an implied license to enter, and no person is a tresspasser by merely entering therein. But all such licenses are in their nature revocable, and if actually revoked, and due notice given to an individual or class of individuals, and they still persist in entering, it is without license, and the owner has a *right to exclude them by force*, if necessary, using no more force than is necessary for that purpose."

Weaver *vs.* Bush, 8 T. R., 78.

If there were any question which could be made in this case of what the fate of the libellant would have been had he been taken to San Francisco, this defence would be well sustained, upon the ground, that if the defendant. when he transferred the libellant to the "Sonora," *believed* that his taking him to San Francisco would lead to a breach of the peace, he was justified in his action.

In the case in 7th Metcalf, Power actually had a ticket, intending to take passage; but the learned Chief Justice, referring to Power's former conduct, uses this language: "And if he, Power, "gave no notice of his intention to enter the car "as a passenger, and of his right to do so, *and if* "*Hall believed* that his intention was to violate a "subsisting, reasonable regulation, then he and his

"assistants were justified in forcibly removing him "from the depot."

Carrying the libellant to San Francisco was calculated not only to endanger the safety of the ship and passengers, but would have subjected the cargo to risk, for which the owners would have been responsible. It has been held, that the phrase "King's enemies" does not include the violence of a mob, or riot, or civil commotion of any nature.

1 Parson's Maritime Law, 181 ; citing the cases.

The exceptions present for the consideration of the Court, that the Court below had no jurisdiction of the matter contained in the libel, by a proceeding *in personam*, and also that the libel was barred by the several Statutes of Limitation of the State of California, particularly referred to in the exceptions, fol. 29, 30 ; to all of which the attention of the Court is respectfully called.

SAMUEL E. LYON,
Of Counsel for the Appellant.

Alex. Hamilton Jr
of counsel for Appellt

But if the Court should hold that the libellant is entitled to recover—then the damages allowed are [redacted] excessive.

No special damage is averred or proved—no unnecessary violence was used in removing him from the ship, nor did he receive bodily harm. He does not show a pecuniary injury of a dollar resulting from the act.

The Sonora touched at Acopulco whence he came, within three days from the time he was put on board of her and he could have landed there had he been disposed

The award of four thousand dollars damages, is, therefore, for the injury to the libellant's feelings.

Taking into view the character of the libellant as portrayed by himself upon the record, such a judgment cannot be sustained upon principle or authority

Supreme Court of the United States.

DECEMBER TERM, 1866.

ROBERT H. PEARSON,
APPELLANT,

vs.

CHARLES P. DUANE,
APPELLEE.

No. 142.

BRIEF OF APPELLEE.

DELOS LAKE,
J. HUBLEY ASHTON,
For Appellee.

Gibbs & Wharton, Printers & Stereotypers, Washington, D.C.

IN SUPREME COURT OF THE UNITED STATES.

December Term, 1866.

ROBERT H. PEARSON, APPELLANT AND DEFENDANT,
vs.
CHARLES P. DUANE, APPELLEE AND LIBELLANT.
} No. 142.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

STATEMENT OF THE CASE.

This was a libel in the district court for the northern district of California, in admiralty, by Charles P. Duane, a resident of San Francisco, against R. H. Pearson, master of steamship John L. Stevens, an American vessel, in a cause of personal damages, civil and maritime. (Folio 1, Printed Record.)

The facts as stated in the libel are substantially that, on the 23d day of June, 1856, the libellant went on board the steamer John L. Stevens at Acapulco, and his passage money was proffered, but refused. (Folio 3.)

On the 26th day of June, 1856, the said Pearson caused said Duane to be forcibly thrust out of the steamer John L. Stevens, and put on board the steamer Sonora, (folio 5,) and carried to the port of Panama. (Folio 9.)

The other allegations in the libel are not material, excepting as giving character to the transactions complained of, and as possibly affecting the question of damages.

The answer admits that the libellant went on board the steamer John L. Stevens at Acapulco, but without the knowledge or consent of the defendant or any of the officers of the steamer, (folio 38,) and denies that the passage money of the libellant was then and there proffered. (Same folio.)

The answer also denies that any force was used to compel libellant to go on board the steamer Sonora. (Folio 42.)

The cause was heard on the pleadings and proofs in the district court, and a decree was rendered in favor of the libellant for the sum of four thousand dollars with costs. (Folio 96.)

The defendant appealed to the circuit court of the United States. (Folio 98.)

The defendant then amended his answer, (folio, 112,) and the cause was again heard on the pleadings and proofs taken in the district court, and additional proofs, and the decree of the district court was affirmed. (Folio 142.)

POINTS OF FACT AND LAW.

FIRST.

The third article of the libel alleges, that on the 23d day of June, 1856, the steamer John L. Stevens, commanded by the defendant, arrived in the port of Acapulco, on his voyage from Panama to San Francisco, and remained in port for about twelve hours, when she resumed her voyage. (Folio 2.)

The fourth article alleges that the steamer J. L. Stevens was then and had previously been a vessel constructed expressly for, and employed in the carrying and transporting of passengers and freight between the ports of Panama, Acapulco, and San Francisco, according to the usual custom of common carriers, and had then on board a number of passengers bound to San Francisco. (Folio 2.)

Both these articles of the libel are admitted by the fifth and sixth articles of defendant's answer. (Folio 37.)

The libellant went on board the steamer John L. Stevens, while lying at Acapulco, and Judge McAllister, a passenger on said steamer, went with him to the office of the purser of the vessel and offered to pay his fare to San Francisco, which was refused, and when asked for the reason of his refusal, "he said he did'nt know, he was authorized by Captain Pearson, (the defendant,) not to do so." (Folio 65.) Libellant was on board four days, when they met the steamer Sonora in the Gulf of Cali-

fornia, (folio 68;) and he was, by order of the defendant, forcibly put on board of her, (folio 71,) and carried to Panama, (folio 73;) he made great efforts to return to San Francisco, (folios 73, 74, 75, 76, 77, and 78,) but being destitute of means to pay his passage his efforts were unavailing, and he was carried (without paying his passage) to New York, and he remained at New York and the East until February 6, 1860, when he returned to San Francisco. (Folio 78.)

It was admitted, on the trial in the district court, "that Judge McAllister offered to pay the fare of libellant to the purser, and had the means of doing so, and it was refused." (Folio 87.)

The proctor and counsel for the defendant, Hall McAllister, Esq., who made this admission in open court, (folio 31,) was the son of Judge McAllister, who offered to pay libellant's fare to San Francisco; and his son, Cutler McAllister, was with him on the ship at the time, (folio 345;) and the counsel had the means of ascertaining, and doubtless did ascertain, from his father, Judge McAllister, and from his brother, Cutler McAllister, before he made this important admission, of the truth of the allegation in the libel, and of the libellant's testimony, that Judge McAllister offered to pay his fare on board the steamer John L. Stevens.

SECOND.

It being alleged in the libel, and admitted in the answer, that the steamer John L. Stevens was constructed expressly for and employed in the carrying and transportation of passengers and freight between Panama, Acapulco, and San Francisco, according to the usual custom of common carriers, the defendant was bound to carry the libellant as a passenger from Acapulco to San Francisco, on being paid or tendered the usual fare.

Parsons on Contracts, vol. 1, page 646, says: "Common carriers by law have usually, if not always, a certain distinct route—not for each particular journey, merely, but for all journeys; that is, they are established and known to the public as carrying upon such a line of transit, and upon no other. This is true, also, of ships belonging to the established packet line. Such

ships would stand upon the same footing as ordinary carriers, by law; and there seems to be no reason why the same rules of law should not apply to them."

With regard to *goods*, Professor Parsons says: "A common carrier is bound to receive and carry all goods offered for transportation." So in 2 Kent Com., 597: "Common carriers undertake generally, and for all people indifferently, to convey," &c., &c. The force of this principle is well shown in a case in England, where the right of the carrier to inquire into the contents of the package, or the character of the article offered for carriage, was denied by the unanimous court in 1854. (Crouch *vs.* London and N. W. Railway Co., 25 Law and Eq., 287, *et seq.*) It is obvious that the rule must apply *à fortiori* to *persons* who are carried.

The same author, at page 698, vol. 1, Par. Con., says:

"A common carrier for passengers is bound to receive all passengers who offer, to carry them the whole route, to demand no more than the usual and established compensation, *to treat all his passengers alike*, to behave to all with civility and propriety, to provide suitable carriages and means of transportation." (See Bennett *vs.* Dutton, 10 N. Hamp. R., 481.)

THIRD.

The libellant went publicly on board the Stevens at Acapulco, and was not refused his passage; "was assisted on board by the officers of the boat," (folio 66;) "was publicly on deck conversing with his friends; was more than one hour with the steward," (same folio.) Captain Pearson knew he was on board; the purser testified: "I immediately reported to Captain Pearson that he (libellant) was on board," (folio 80;) and the captain's own witness, C. H. Hewitt, testified "that he was at the gangway when Duane came on board," (folio 259.) At folio 260 he says: "I went and reported to the captain that I thought Charley Duane had come on board the ship." And having been carried from Acapulco, after coming publicly on board, with the knowledge of Captain Pearson, and having tendered his fare, was as much entitled to his passage as any other person, and his rights

were as grossly violated as would have been those of Judge McAllister, or any other passenger, if the captain had taken a freak against them and paid back or tendered them their fare, and then forcibly put them on board the Sonora.

FOURTH.

After the trial and decree in the district court the appellant amended his answer, (folio 112,) the trial having shown him the weak points of his defense; and he had learned what it was deemed necessary to prove to make his defense successful. On the trial in the circuit court the appellant examined four witnesses, and was sworn himself, (folio 39.)

To attempt the denial of the testimony of the libellant, (folio 65,) and the stipulation admitting that Judge McAllister offered to pay the fare of Duane to the purser, and had the means of doing so, and that it was refused, (folio 87,) was an afterthought of the appellant, as he grew desperate in view of his final defeat.

That stipulation was in open court, in the presence of the appellant, and was binding and conclusive upon him.

It obviated the necessity of further proof on that point, and the appellant was estopped from denying the truth of the admission.

An estoppel *in pais* will exist against a party where it appears: first, that he has made an admission which is clearly inconsistent with the evidence he proposes to give, or the title or claim which he proposes to set up; second, that the other party acted upon the admission; and, third, that he will be injured by allowing the truth of the admission to be disproved. 6 Ad. and E., 475; 3 Hill, 215; 8th Wend., 483. Court of Appeals, 1858, Plumbe *vs.* Cattaraugus County Mutual Ins. Co., 18 N. Y., (4th Smith,) 392; Truscott *vs.* Davis, 4 Barb., 495; Martin *vs.* Angell, 7 do., 407; Otis *vs.* Sill, 8 *Id.*, 102; and see Cremin *vs.* Byrnes, 4 E. D. Smith, 756.

The effect of this admission is thus stated by an eminent text authority:

"The admissions of *attorneys of record* bind their clients in all matters relating to the progress and trial of the cause. But to

this end, they must be distinct and formal, or such as are termed solemn admissions, made for the express purpose of alleviating the stringency of some rule of practice, or of dispensing with the formal proof of some fact at the trial. In such cases they are in general conclusive, and may be given in evidence, even on a new trial. But other admissions, which are mere matters of conversation with an attorney, though they relate to the facts in controversy, cannot be received in evidence against his client. The reason of the distinction is found in the nature and extent of the authority given, the attorney being constituted for the management of the cause in court, and for nothing more. If the admission is made before suit, it is equally binding, provided it appear that the attorney was already retained to appear in the cause. Where the attorney is already constituted in the cause, admissions made by his managing clerk or his agent are received as his own." 1 Greenleaf Ev., § 186.

FIFTH.

The court will not from the printed record undertake to balance the testimony and decide upon the credibility of the witnesses; that was the peculiar province of the judges in the courts below; they saw the witnesses, and from their appearance and manner of testifying could determine what credit was due each. (1 Black, 417; 3 Wallace, 267.)

Take the testimony of the witness, C. H. Hewett, who was examined on the part of the appellant. (Folio 258.)

On his cross-examination he was asked—

"*Q.* Have you talked with Captain Pearson about what you know about this case?

"*A.* No, I have not.

"*Q.* Not a word?

"*A.* Not a word." (Folio 269.)

And yet at the conclusion of the same folio he admits that he had talked with Captain Pearson generally about the case, and folio 272 he says: "*My best opinion is I told him the whole circumstances.*"

He was called doubtless for the sole purpose of contradicting

the libellant as to what passed on the *Stevens* after he came on board at Acapulco. He made some statements that corroborated the testimony of the libellant. "He was at the gangway, when Duane came on board." (Folio 259.) "I went and reported to the captain," &c. (Folio 260.) "I left him at the gangway, to go and report the same to the captain." (Folio 260.) But his statements were so contradictory, and so contradicted by others, it was evident to the district and circuit judges that his testimony was entirely unworthy of belief. He denied that he drew or had a pistol. (Folios 262, 263.)

The libellant testified that "he saw the mate, Hewett, cocking his pistol; said, Shoot away, you can't intimidate me; the passengers said, Put up your pistol. I think he put it up." (Folio 70.) Waters, a passenger on the *Stevens* testified, "I heard the mate say he'd got his pistol," &c. (Folio 85.)

SIXTH.

It was proven by the testimony of libellant, (folio 66,) that Captain Pearson knew he was on board before the *Stevens* left Acapulco, which was confirmed by the statements of the witness, Hewett, (folio 260,) and Captain Pearson made no objection to his remaining on board, according to the captain's own statement, till "some time during the day after we sailed." (Folio 309.)

"He then told him that he should put him on the first down ship he met and send him back to Acapulco where he came from," (folio 313,) and having taken him without objection from Acapulco, he had no right under the circumstances to send him back against his will. He should have refused to sail with him on board, if he intended to withhold from him the rights of a passenger.

The counsel for the appellant felt the importance of establishing, if possible, the fact that he had no knowledge of libellant's being on board till some time after the J. L. Stevens left Acapulco, and evidently pressed the appellant to contradict his own witness, Hewitt, (folios 309–310,) but only succeeded in establishing that the appellant had a very *bad* or *very convenient* memory.

The counsel for the appellant (folios 322, 323) again tried

him at contradicting the testimony of Christopher Dall, (folios 85, 86,) and again only succeeded in establishing, to say the least, that he had a very defective memory, so much so that his Honor, Judge Field, evidently considered his testimony entitled to no weight whatever, especially as his evidence, so important if true, had not been offered on the first trial, a circumstance certainly very strange, if not unaccountable, on any other theory than that a desperate defense, to be successful, required desperate evidence, and the appellant was put on the stand to supply what was found to be wanting on the first trial.

SEVENTH.

Had the plaintiff been a person notoriously of bad character and associations, "belonging to the swell mob," and even a pickpocket, yet, as long as he had not committed improprieties on board, his right was the same as that of any other passenger; and if, in expelling him from shipboard, contemptuous language had been used, he would be entitled even to damages for the latter.

This point may be sustained by a leading case in England, in which the plaintiff was reported to be a pickpocket and associate of what was called the "swell mob," and as such, being found on board, though, by consent of the officers of the vessel, they determined that he was unfit for a passenger, and disembarked him agaist his will at an intermediate point, using with the act contemptuous and insulting language. At *nisi prius*, judgment was for the plaintiff, and a motion in arrest of judgment, on the ground that the declaration was bad in that it alleged as breach that the defendant, by his agent, had caused the disembarkation to be conducted in a scandalous and improper manner, etc., whereby the plaintiff suffered injury, etc., was emphatically overruled by the court. (Coppin *vs.* Braithwaite, 8 Jur. 875, Exch.)

The judgment should be affirmed with *ten per cent.* interest from the date of the decree in the district court.

DELOS LAKE,
J. HUBLEY ASHTON,
For Appellee.